TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 100

ILLINOIS NATURAL GAS COMPANY, APPELLANT,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED MAY 22, 1941.

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[fol. 1] **IN SUPREME COURT OF ILLINOIS**

Be It Remembered, that, to-wit: on the first day of November, 1940, the same being one of the days in vacation after the term of Court aforesaid, the record of the proceedings of the circuit court of Coles County was filed by the Illinois Natural Gas Company, appellant, in the office of the Clerk of the Supreme Court of Illinois, in re:

No. 25992

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

Of which pages 16 to 28, both inclusive, of the printed Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938, as appears at Item 182 of the original Record now on file in the Supreme Court of Illinois are in the words and figures following, to-wit:

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-B

OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the

Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President

Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-B—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas, and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company), after establishing and during the period of continuance of a promotional form of retail rate under which its house heating customers may purchase natural gas, either at a net rate not exceeding five and one-half (5½) cents per therm (100,000 B.t.u.) for monthly consumption in excess of thirty (30) therms, or at a net rate not exceeding five (5) cents per therm for monthly consumption in excess of fifty (50) therms, may at its option purchase natural gas hereunder, for resale as such within the area defined by its franchises, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for a minimum period of one year and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

Capacity Charge:

The capacity charge shall be based on the billing demand, determined as hereinafter set forth, and shall be computed by applying thereto the following rates:

$ .55 per 100 cubic feet of billing demand, for the first 40 cubic feet, or part thereof, per customer;
$ .40 per 100 cubic feet of billing demand, for the next 40 cubic feet, or part thereof, per customer;
$ .25 per 100 cubic feet of billing demand, for all in excess of 80 cubic feet per customer.

Commodity Charge:

The commodity charge shall be based on the total quantity of gas delivered hereunder during the monthly billing period and shall be computed by applying thereto the following rates:

$ .016 per 100 cubic feet, for the first 4,000 cubic feet, or part thereof, per customer;
$ .014 per 100 cubic feet, for the next 4,000 cubic feet, or part thereof, per customer;
$ .012 per 100 cubic feet, for all in excess of 8,000 cubic feet per customer.

RATE

Capacity Charge:

The capacity charge shall be based on the billing demand, determined as hereinafter set forth, and shall be computed by applying thereto the following rates:

$ .55 per 100 cubic feet of billing demand, for the first 40 cubic feet, or part thereof, per customer;
$ .40 per 100 cubic feet of billing demand, for the next 40 cubic feet, or part thereof, per customer;
$ .25 per 100 cubic feet of billing demand, for all in excess of 80 cubic feet per customer.

Commodity Charge:

The commodity charge shall be based on the total quantity of gas delivered hereunder during the monthly billing period and shall be computed by applying thereto the following rates:

$ .016 per 100 cubic feet, for the first 4,000 cubic feet, or part thereof, per customer;
$ .014 per 100 cubic feet, for the next 4,000 cubic feet, or part thereof, per customer;
$ .012 per 100 cubic feet, for all in excess of 8,000 cubic feet per customer.

DETERMINATION OF BILLING DEMAND

The Billing Demand shall equal the average quantity of gas delivered by the Company to the Utility during a twenty-four (24) hour period included in the billing month during which the greatest quantity of gas has been delivered by the Company to the Utility subsequent to the initial delivery of natural gas by the Company to the Utility under this schedule and/or under any former schedule or contract, and prior to the end of the current billing month, and shall be determined by dividing the total quantity of gas delivered during such billing month of greatest delivery by the number of twenty-four (24) hour days included in said billing month.

PROVIDED, HOWEVER, THAT

If the aggregate consumption of gas of all of the Utility's "Large Industrial Customers" for whom gas is purchased hereunder shall be less in the aggregate for the twenty-four (24) hour period of average delivery by Company to Utility during November of any year than during the twenty-four (24) hour period when the billing demand has theretofore been established,

Then and in that event the billing demand shall be reduced for such month of November and thereafter until a greater billing demand is established, as herein provided, such reduction to be in an amount equal to the amount of said decreased consumption. However, in no event shall the new billing demand thus established be less than that for the twenty-four (24) hour period of average delivery by the Company to the Utility during such November.

The term "Large Industrial Customers" as used herein shall be construed to mean those who have used in excess of one hundred thousand (100,000) cubic feet of gas during the twenty-four (24) hour periods herein referred to.

Issued June 30, 1938 Effective June 30, 1938

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availabiiity Clause)

RATE NO. 3-B—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Deliveries of gas during the period from April 1st to October 31st, inclusive, in any year shall not establish a billing demand higher than the billing demand established prior to such period. This provision shall not apply to the delivery of gas to any Utility during the first such period in which it purchases gas from the Company.

DETERMINATION OF NUMBER OF CUSTOMERS

The number of customers for billing purposes shall be the average number of the Utility's meters in use during each billing month, and shall be determined by taking the total number of meters in use on the last day of the current billing month and adding thereto the total number of meters in use on the last day of the previous billing month and dividing the sum thereof by two.

On or before the 5th day of each month the Utility shall furnish the Company with a statement of the number of meters in use on the last day of the preceding month, which shall be considered the current billing month. Wherever a customer of the Utility is served through two or more meters, the readings of which are combined for billing purposes by the Utility, such group of meters shall be considered as one meter.

DEFINITION OF BILLING MONTH

The billing month shall be the calendar month unless otherwise agreed to between the parties.

TERMS AND CONDITIONS

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28 inclusive.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-D
OPTIONAL RATE FOR INTERRUPTIBLE SERVICE
TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued March 10, 1939 **Effective April 10, 1939**

Issued by G. J. NEUNER, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-D—OPTIONAL RATE FOR INTERRUPTIBLE SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, grants, etc., requisite to the distribution and sale of gas, and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may, at its option, *until May 1, 1939*, purchase natural gas hereunder for resale as such, within the area defined by its franchises, to any customer whose monthly consumption is one hundred thousand (100,000) cubic feet or more. *After April 30, 1939*, the Utility may, at its option, purchase gas hereunder for resale to:

1. *Any customer whose gas requirements were purchased hereunder prior to May 1, 1939.*

2. Any customer whose monthly consumption of gas is in excess of one hundred thousand (100,000) cubic feet *and whose total use of gas during the months of January and February, combined, constitutes less than thirty per cent (30%) of his total annual requirements of gas.*

Subject to the limitations herein set forth, the exercise of such option by the Utility shall be evidenced by written notice signed by a proper officer of the Utility addressed and forwarded by registered mail to the principal office of the Company and shall be for the period of service to such customer or until this schedule is superseded by another rate schedule.

RATE

40c per 1,000 cubic feet for the first 100,000 cubic feet of monthly consumption per customer;
25.5c per 1,000 cubic feet for the next 900,000 cubic feet of monthly consumption per customer;
20.5c per 1,000 cubic feet for the next 1,000,000 cubic feet of monthly consumption per customer;
18c per 1,000 cubic feet for the next 40,000,000 cubic feet of monthly consumption per customer;
17.5c per 1,000 cubic feet for all gas in excess of 42,000,000 cubic feet of monthly consumption per customer.

TERMS AND CONDITIONS

The Company reserves the right to discontinue this option to Utilities with respect to additional customers upon sixty days notice if in its judgment additional gas or line capacity is not available.

Deliveries hereunder shall be subject to curtailment or interruption when such gas is needed to meet the requirements of customers receiving service under classifications contemplating an uninterruptible supply of gas, either directly or indirectly, from the pipe line system of the Company.

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28, inclusive, except where the terms and conditions thereof are inconsistent or at variance with the terms and conditions hereof.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-E

OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the

Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-E—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified Utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may at its option purchase natural gas hereunder, for resale as such within the area defined by its franchises, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for a minimum period of one year and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

Forty cents (40c) per thousand cubic feet;

PROVIDED, THAT, for gas sold by the Utility when the total delivery to any individual user shall exceed one hundred thousand cubic feet in any month, payment shall be made by the Utility to the Company for all gas sold in such month in excess of one hundred thousand cubic feet to such individual user at the rate of sixteen cents (16c) per thousand cubic feet, which shall be referred to as the "Base Rate," plus one-half of the remainder of such individual user's monthly bill for gas in excess of one hundred thousand cubic feet after deduction of a sum equal to the payment of the full amount of such consumer's monthly consumption in excess of one hundred thousand cubic feet, at the rate of sixteen cents (16c) per thousand cubic feet. Leakage suffered by the Utility in its distributing plants and/or systems shall be paid for at the rate of twenty-five cents (25c) per thousand cubic feet.

PROVIDED, FURTHER, that in no event shall the Utility pay the Company a higher price per thousand cubic feet than forty cents (40c) for any gas delivered hereunder.

PROVIDED, FURTHER, that in the event any properly qualified Utility exercises its option to purchase natural gas hereunder for resale as such to its customers in any city or village served by it, all gas deliveries falling within the 40c per MCF rate provision hereof, shall be paid for at the rate of thirty five cents (35c) per thousand cubic feet for the first year following the initial delivery of natural gas by the company to the utility for resale in said city or village, and for the second year following such initial delivery, shall be paid for at the rate of thirty-seven and one-half cents (37½c) per thousand cubic feet.

TERMS AND CONDITIONS

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, Sheets 25 to 28, inclusive.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-F
OPTIONAL INDUSTRIAL RATE—INTERRUPTIBLE SERVICE TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-F—OPTIONAL INDUSTRIAL RATE—INTERRUPTIBLE SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified Utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas, having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may at its option purchase natural gas hereunder during the period ending October 31, 1940, for resale as such within the area defined by its franchises to any industrial customer whose individual monthly consumption is in excess of 1,000 MCF and not seasonal on peak in nature, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for the period of service to such customer, but in no event beyond October 31, 1940, and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

40c	per 1,000 cubic feet for the first	100,000 cubic feet of monthly consumption per customer;
30c	per 1,000 cubic feet for the next	900,000 cubic feet of monthly consumption per customer;
20c	per 1,000 cubic feet for the next	1,000,000 cubic feet of monthly consumption per customer;
18c	per 1,000 cubic feet for the next	40,000,000 cubic feet of monthly consumption per customer;
16.5c	per 1,000 cubic feet for all gas in excess of	42,000,000 cubic feet of monthly consumption per customer.

TERMS AND CONDITIONS

The Company reserves the right to discontinue this option to Utilities with respect to additional customers upon sixty days notice if in its judgment additional gas or line capacity is not available.

All gas sold and delivered hereunder is intended solely for resale as industrial fuel and shall not be diverted, sold or used by the Utility for any other purpose.

Deliveries hereunder shall be subject to curtailment or interruption when such gas is needed to meet the requirements of customers receiving service under classifications contemplating an uninterruptible supply of gas, either directly or indirectly, from the pipe line system of the Company.

The term "industrial customer" as used herein is intended to mean any customer of the Utility engaged in a manufacturing process or the generation of power.

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28, inclusive, except where the terms and conditions thereof are inconsistent and/or at variance with the terms and conditions hereof.

ILLINOIS NATURAL GAS COMPANY

RULES, REGULATIONS AND CONDITIONS OF SERVICE FOR WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE WHOLESALE NATURAL GAS SERVICE TO UTILITIES

APPLICATION

The following Rules, Regulations and Conditions of Service apply to all sales of natural gas by Illinois Natural Gas Company (hereinafter called the Company) to any utility company in the State of Illinois (hereinafter called the Utility) under any schedule of rates for natural gas service to utilities filed by the Company with the Illinois Commerce Commission, except to the extent that such rules, regulations and conditions of service may be inconsistent and/or at variance with, and superseded by, the terms and conditions contained in any specific schedule.

POINTS OF DELIVERY

The points of delivery of the natural gas sold hereunder shall be the outlets of the Company's measuring stations situated at the present established points of delivery, or such other points as may be agreed upon between the Company and the Utility. The Company will install, maintain and operate at its own expense meters and metering equipment at each point of delivery, through which meters the gas delivered to the Utility hereunder shall be measured. The Company will also install, operate and maintain at its own expense at or near each point of delivery such regulator stations as may be necessary, and will at all times maintain a pressure adequate to meet the requirements of the Utility's customers, which, however, shall not be greater than fifty (50) pounds gauge pressure per square inch at its measuring stations except by mutual agreement.

All property and equipment installed by either the Company or the Utility in connection with the delivery of gas or otherwise shall remain the property of the party originally installing the same, and may be removed by the owner upon the termination of service.

POINTS OF DELIVERY

The points of delivery of the natural gas sold hereunder shall be the outlets of the Company's measuring stations situated at the present established points of delivery, or such other points as may be agreed upon between the Company and the Utility. The Company will install, maintain and operate at its own expense meters and metering equipment at each point of delivery, through which meters the gas delivered to the Utility hereunder shall be measured. The Company will also install, operate and maintain at its own expense at or near each point of delivery such regulator stations as may be necessary, and will at all times maintain a pressure adequate to meet the requirements of the Utility's customers, which, however, shall not be greater than fifty (50) pounds gauge pressure per square inch at its measuring stations except by mutual agreement.

All property and equipment installed by either the Company or the Utility in connection with the delivery of gas or otherwise shall remain the property of the party originally installing the same, and may be removed by the owner upon the termination of service.

BASIS OF MEASUREMENT

The unit of measurement for the natural gas delivered under this schedule shall be one (1) cubic foot of natural gas at a base temperature of sixty (60) degrees Fahrenheit, and at a base pressure of eight (8) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch absolute pressure. For the purpose of measurement, the natural gas delivered hereunder shall be assumed to obey Boyle's Law and the average absolute (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of the actual elevation or location of the point of delivery above sea level or of variations in such barometric pressure from time to time. For meters of the orifice type, the following factors shall be given due consideration, viz:

(1) For each delivery point at which the average daily delivery over an annual period shall exceed 150,000 cubic feet, the temperature of the natural gas flowing through the meter shall be obtained by the use of a recording thermometer so installed by the Company that it may properly record the temperature of the natural gas flowing through the meter. The average hourly temperature recorded in each twenty-four (24) hour day shall be used in computing measurements. For each delivery point at which the average daily delivery over an annual period shall not exceed 150,000 cubic feet, the Company shall not be required to install a recording thermometer, and, where such installation is not provided, the temperature of the gas for the purpose of measurement shall be assumed to be sixty (60) degrees Fahrenheit.

(2) The specific gravity of the natural gas shall be determined by joint test as often as either the Company or the Utility may require, but at any rate not oftener than twice a month. The method of test used shall be by Edwards' Balance, or by such other method generally recognized as standard as shall be adopted by the Company, with the approval of the Illinois Commerce Commission. The average of such tests shall determine the specific gravity to be used in computation for the measurement of natural gas deliveries until changed by subsequent tests.

METER INSPECTION AND ADJUSTMENTS FOR ERROR

Meters and measuring equipment used to measure gas delivered to the Utility shall be open to the inspection of the Utility at all reasonable times, upon request of the Utility to the Company, but in the presence of the Company's representative. The Company shall test such meters at reasonable intervals, and also whenever requested by, and in the presence of, a representative of the Utility; but the Company shall not be so required to make such tests more frquently than once in any thirty (30) day period. Meter measurements found to be in error more than two (2) per cent shall be corrected and accounts adjusted accordingly, but the period

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE
WHOLESALE NATURAL GAS SERVICE TO UTILITIES

of adjustment shall not exceed thirty (30) days preceding the test. The provisions of this paragraph shall also be applicable to meters and metering equipment used by the Utility in the measurement of gas delivered to large consumers.

QUALITY OF GAS TO BE DELIVERED HEREUNDER

The natural gas delivered hereunder shall be natural gas as produced in its natural state from the wells, except that (1) the Company may blend with said natural gas the gas coming from the stills of oil refineries or casinghead gasoline extraction plants, or return to said natural gas any substance extracted from it, and the term "natural gas" as used herein shall include natural gas so mixed; and (2) the Company may extract or permit the extraction of any helium content, and/or the natural gas gasoline, and/or any other content from said natural gas, provided such extraction or treatment does not impair the marketability of the natural gas so delivered. Said natural gas shall be merchantable and conform to the standard of purity prescribed by the Illinois Commerce Commission.

ADJUSTMENT FOR VARIATIONS IN HEATING VALUE

The natural gas delivered to the Utility shall have a total heating value of approximately one thousand (1,000) British thermal units per cubic foot. Should the average heating value of the gas delivered in any day be more than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot, then for the purpose of and before determining the Utility's billing demand and commodity charge the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot.

The Company will maintain without expense to the Utility, calorimeter equipment of standard type for the purpose of determining the total heating value of gas delivered to the Utility. Such equipment shall be maintained at a point on its pipe line system to be determined by the Company. The Utility may at its option and at its own expense install calorimeter equipment for check purposes. The Company's determination of the heating value of gas delivered to the Utility shall be considered correct; provided, however, that if the Utility's determination of heating value differs more than two (2) per cent from the Company's determination thereof and said difference affects payments for gas delivered to the Utility, the Company and the Utility shall mutually agree as to the correct heating value of such gas, and, failing so to agree within ten (10) days, either the Company or the Utility shall thereupon have the right to refer the matter to an engineer of the Illinois Commerce Commission for determination, whose decision shall be final for the period in which the dispute arises. Upon final determination of the correct heating value, accounts shall be adjusted accordingly. All charts and records in connection with the measurement and determination of the heating value of gas delivered hereunder shall be preserved by the parties for a period of at least three (3) years, and each party's current charts and records shall be forwarded to the other upon request, but not oftener than twice each month, and, when so forwarded, shall be returned within ten (10) days after the receipt thereof.

ADJUSTMENT FOR VARIATIONS IN HEATING VALUE

The natural gas delivered to the Utility shall have a total heating value of approximately one thousand (1,000) British thermal units per cubic foot. Should the average heating value of the gas delivered in any day be more than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot, then for the purpose of and before determining the Utility's billing demand and commodity charge the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot.

The Company will maintain without expense to the Utility, calorimeter equipment of standard type for the purpose of determining the total heating value of gas delivered to the Utility. Such equipment shall be maintained at a point on its pipe line system to be determined by the Company. The Utility may at its option and at its own expense install calorimeter equipment for check purposes. The Company's determination of the heating value of gas delivered to the Utility shall be considered correct; provided, however, that if the Utility's determination of heating value differs more than two (2) per cent from the Company's determination thereof and said difference affects payments for gas delivered to the Utility, the Company and the Utility shall mutually agree as to the correct heating value of such gas, and, failing so to agree within ten (10) days, either the Company or the Utility shall thereupon have the right to refer the matter to an engineer of the Illinois Commerce Commission for determination, whose decision shall be final for the period in which the dispute arises. Upon final determination of the correct heating value, accounts shall be adjusted accordingly. All charts and records in connection with the measurement and determination of the heating value of gas delivered hereunder shall be preserved by the parties for a period of at least three (3) years, and each party's current charts and records shall be forwarded to the other upon request, but not oftener than twice each month, and, when so forwarded, shall be returned within ten (10) days after the receipt thereof.

MONTHLY BILLING AND PAYMENT FOR GAS DELIVERED

The Company shall furnish the Utility on or before the fifth day of each calendar month a statement showing the quantity of gas delivered through each of its measuring stations to the Utility. When information necessary for billing purposes is in the control of the Utility, the Utility shall furnish such information to the Company on or before the fifth day of each month for the monthly billing period next preceding. Payment by the Utility to the Company for all gas delivered shall be made monthly in amounts determined in accordance with the schedule of rates under which the Utility purchases gas. The Company shall render bills on or before the fifteenth day of each month for all gas delivered in the preceding month, and the Utility shall pay such bills on or before the twentieth day of the month in which the same are rendered.

AUDIT OF UTILITY'S RECORDS

The Company, upon written request of the Utility, may, but not more than twice in each calendar year, audit the Utility's records, in order to check the number of the Utility's meters for the purpose of verifying any meter statements theretofore furnished by the Utility or for any other purpose affecting payments to be made for gas delivered by the Company to the Utility. Any errors or discrepancies disclosed by any such audit shall be promptly adjusted.

Issued June 30, 1938

Effective June 30, 1938

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE
WHOLESALE NATURAL GAS SERVICE TO UTILITIES

LARGE VOLUME DELIVERIES OF GAS FOR RESALE TO INDIVIDUAL CUSTOMERS OF THE UTILITY

Where deliveries to the Utility are made under the Company's filed schedule of rates Nos. 3-D and 3-F, for resale to individual customers of the Utility, deliveries of gas to each such individual customer shall be measured separately by the Utility through meters of standard type, and, when necessary, such meters shall be equipped with recording apparatus furnishing a continuous record. If such deliveries to the Utility are made through the city gate meters of the Company, proper deduction of daily and/or monthly quantities of gas sold to the Utility under such rate schedule will be made before computing the monthly bill for the remainder of the gas delivered through such city gate meters.

COPIES OF INDUSTRIAL CONTRACTS

The Utility shall furnish to the Company, for the latter's information, copies of all of its industrial contracts for the sale of gas, and shall confer with the Company before entering into agreements with prospective industrial customers whose requirements are estimated to exceed one hundred thousand (100,000) cubic feet daily during any period from November 1st to March 31st, inclusive, for the purpose of protecting the requirements of all purchasers of gas from the Company and insuring adequacy of supply and line capacity.

PRECEDENCE OF DOMESTIC AND COMMERCIAL CUSTOMERS

The supply and delivery of gas to domestic and commercial customers shall take precedence over the requirements of industrial users, and in the event of temporary interruption in supply from any cause whatsoever, or diminution in supply to a point where all customers cannot be adequately served, or in the event of a lack of sufficient capacity in the Company's pipe lines adequately to serve all users during any period of peak demand, the Utility, upon notice from the Company, shall curtail or discontinue industrial deliveries to customers served by it, and the Company shall also require similar and proportionate curtailment or discontinuance of all other industrial deliveries. All contracts entered into by the Utility with its industrial customers shall contain appropriate provisions for the protection of service to domestic and commercial customers pursuant to the provisions of this paragraph.

RESPONSIBILITY OF THE PARTIES PRIOR TO AND AFTER DELIVERY

The Utility shall have no responsibility whatsoever in respect to gas prior to delivery thereof to it, or be in any way responsible for or on account of anything which may be done, happen or arise with respect to gas prior to such delivery, and the Company shall protect and save harmless the Utility from all claims, suits, damages, acts or things with respect to said gas prior to the delivery thereof.

The Company shall be in no wise responsible for or on account of anything which may be done, happen or arise out of the use of gas delivered to the Utility due to the Utility's handling thereof, and the Utility shall protect and save harmless the Company from all claims, suits, damages, conduct, acts or things arising out of the use of said gas after the delivery thereof.

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The Utility shall furnish to the Company, for the latter's information, copies of all of its industrial contracts for the sale of gas, and shall confer with the Company before entering into agreements with prospective industrial customers whose requirements are estimated to exceed one hundred thousand (100,000) cubic feet daily during any period from November 1st to March 31st, inclusive, for the purpose of protecting the requirements of all purchasers of gas from the Company and insuring adequacy of supply and line capacity.

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The Company shall be in no wise responsible for or on account of anything which may be done, happen or arise out of the use of gas delivered to the Utility due to the Utility's handling thereof, and the Utility shall protect and save harmless the Company from all claims, suits, damages, conduct, acts or things arising out of the use of said gas after the delivery thereof.

FORCE MAJEURE

Neither the Company nor the Utility shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of war, riots, strikes, lockouts, acts of God, accidents, line breakage, floods, storms, washouts, fire, freezing of wells or lines of pipe, diminution or failure of supply, or any other cause or condition, whether of the kind above specified or otherwise, not within the reasonable control of the parties.

NOTICES AND COMMUNICATIONS

All notices, other than those relating to operating matters (which may be communicated by telephone), shall be deemed to have been properly given when forwarded by registered mail addressed to the principal office of the Company or the Utility.

[fols. 16-17] IN CIRCUIT COURT OF COLES COUNTY

STIPULATION RE INTRODUCTION IN EVIDENCE OF RATES, RULES AND REGULATIONS

Mr. Stevens: Could we make it more specific at this time, and have the understanding that either side may refer to or may furnish copies of and have them put into the record if they care to, of such portions as they care to of Sheets Nos. 16 to 28 inclusive of the Illinois Natural Gas Company gas rate schedule, as on file with the Commission?

Mr. Clark: That is perfectly agreeable to us.

[fol. 18] IN CIRCUIT COURT OF COLES COUNTY

OFFER IN EVIDENCE

Mr. Stevens: I think we introduced at the former hearing a copy of the Commission's order in Case No. 26563. I would like to read from the record in that case certain statements made by Vice-Presidents of the Panhandle Eastern Pipeline Company in that proceeding.

Mr. Farrell: What does that proceeding involve?

Mr. Stevens: That involved the transfer of the Illinois Pipeline Company so far as interstate property went, and to the Illinois Natural Gas Company insofar as Illinois property, latterals and other property. It involved the transfer of certificate from the Panhandle Illinois Pipeline Company to the Illinois Natural Gas Company, and the entire matter of the transfer of stock.

These statements relate one of the purposes had in mind by the respective companies in making that splitup of the Panhandle Illinois Pipeline Company property. The following is the language used in addressing the Commission by Mr. Neuner, E. J. Neuner, at that time and now—at that time Vice-President of the Panhandle Eastern Pipeline Company and of the Illinois Pipeline Company, and——

Mr. Farrell: You mean the Illinois Natural Gas Company?

Mr. Stevens: Yes, the Illinois Natural Gas Company and the Panhandle Illinois Pipeline Company. I think he occupied those three positions, and still occupys the position of

Vice-President of the Illinois Natural Gas Company and the Panhandle Eastern Pipeline Company.

[fol. 19] Mr. Clark: He does now, but I am not sure whether he was Vice-President of the Panhandle Eastern Pipeline Company at that time or not. He testified the other day that he did not know the exact time, but approximately two years ago, I believe.

Mr. Stevens: I think he said two years ago, and this proceeding before the Commission began in January of 1938 and closed in June. It is very short. I will read it into the record, if I may.

Mr. Neuner's language, insofar as we care to have it appear in this record is as follows:

"The purpose to be accomplished by the present proceeding is the separation of the property and the business of Panhandle Illinois Pipeline Company to the end that the property and the business, which is purely intrastate and of a local public utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operating as a public utility in this State and that the main line and compressing stations not used, useful or necessary in the conduct of a public utility business be transferred to Panhandle Eastern Pipeline Company, a Delaware Corporation".

Mr. Bay, at that time Vice-President of both of those companies, as I recall, at that time testified as follows:

"Exhibit A, as a whole, is a complete schedule of all of the properties now owned by Panhandle Illinois Pipeline Company and proposed to be transferred to Illinois [fol. 20] Natural Gas Company which are used useful in the conduct of the utility business in the State of Illinois."

Question by Mr. Neuner:

"It is true, Mr. Bay, that Exhibit A attached to that contract is all of the property of Panhandle Illinois Pipeline Company exclusive of the main line and compressor station?"

Answer:

"That is true".

Then:

"I will ask you to state whether or not that schedule includes all of the Certificate of Convenience and Necessity

heretofore granted to Panhandle Illinois or its predecessor in Illinois?"

And the answer was:

"It does."

Then the question:

"So that under this contract the Illinois Natural will own all of the Certificates of Convenience and Necessity now owned by Panhandle Illinois"?

And the answer:

"That is true".

Then the question was asked:

"If and when the plan contemplated is approved by the Commission and the transfer of the property is effected, is it the intention that Illinois Natural file with the Commis- [fol. 21] sion rate schedules, rules and regulations and conditions of service for the rendition of natural gas service both directly and indirectly to customers in Illinois substantially identical with the rate schedules, rules and regulations and conditions of service of Panhandle Illinois now on file with the Commission and at present in effect?"

The answer was:

"That is the intention under this plan".

Then the question is asked.

"The points of delivery where the gas is to be delivered from Panhandle Eastern to Illinois Natural under this proposed contract is fixed at the points of connection of the lateral lines with the main line; is that correct?"

And the answer:

"That is right."

Then the question:

"Is it the intention that the volumes delivered be also measured at those points of connection?"

And the answer:

"In instances, yes; in others, probably no, at this time. However, the general plan contemplates the use of existing meters where they are located at the main pipeline and possibly additional meter installations where there is no such existing points of measurement as time goes on".

Mr. Clark: Mr. Stevens, what was the statement you read—I do not mean to repeat it, but the statement of Mr. Neuner. Was that in an opening statement?

[fols. 22-24] Mr. Stevens: Yes, sir.

Mr. Clark: And he was acting as attorney——

Mr. Stevens: Counsel for all three companies, I think, at that time.

Mr. Clark: I wish to reserve the right, of course, to check those statements against the transcript. I have no objection to the testimony of Mr. Bay, but I do enter an objection as to Mr. Neuner's statement, that it is incompetent, irrelevant and immaterial in this proceeding, and especially as to his statements that the business of the company would be intrastate. I object to that as a conclusion of law and as a matter not in evidence in that particular case. I ask that that part of the record be stricken.

Mr. Farrell: The objection is overruled, and the motion is denied.

[fol. 24-1] IN SUPREME COURT OF ILLINOIS

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, *et al., Petitioner-Appellees,*

vs.

ILLINOIS NATURAL GAS COMPANY, *Respondent-Appellant.*

In the matter of the application for an order by the Commission directing Respondent to furnish wholesale natural gas service to Petitioner at or near Mattoon, Illinois.

Appeal from: Illinois Commerce Commission No. 27906. Circuit Court of Coles County, No. 2179.

Victor Hemphill, *Judge Presiding*

Abstract of Record—Filed November 9, 1940

Notice of Appeal filed January 25, 1940, to the Circuit Court of Coles County from order of Illinois Commerce Commission entered on November 30, 1939.

Entry of Appearance of Illinois Commerce Commission to Circuit Court of Coles County, Cause No. 2179.

[fol. 24-2] APPLICATION BEFORE COMMISSION

Application filed before Illinois Commerce Commission, May 22, 1939, abstracted as follows:

Central Illinois Public Service Company is a corporation organized and existing under and by virtue of the laws of

the State of Illinois, and is and for some years last past has been engaged, with charter powers so to do, in supplying and distributing natural gas at retail to the public in the cities of Mattoon, Effingham, Paris and Charleston and intermediate communities, all in the State of Illinois, and is in so doing a public utility subject to the jurisdiction of the Commission.

Paris and Charleston are located, respectively, approximately 40 and 12 miles eastwardly from Mattoon, and Effingham is located approximately 30 miles southwardly from Mattoon; that said cities and intermediate communities are, and for some years have been, all interconnected by gas transmission mains of the petitioner, one extending eastwardly from Mattoon to Charleston and Paris, and the other southwardly from Mattoon to Effingham; that the two transmission mains were originally installed by petitioner for the transmission of artificial gas from Mattoon to Charleston and Paris, and from Mattoon to Effingham, from its artificial gas plant at Mattoon, then operated by petitioner as a central plant in order to obtain the economies resulting from centralized manufacture; that the displacement of artificial by natural gas which occurred generally throughout the State in the early years of the present decade led the petitioner to substitute natural for artificial gas in [fol. 24-3] its public utility gas operations in said cities and communities transmitted from the State of Indiana to petitioner at a point near said City of Paris, and thence transmitted by petitioner to the aforesaid cities and communities by means of petitioner's said interconnecting gas transmission mains; that the natural gas so obtained by petitioner and furnished by it to said cities and communities is now supplied to petitioner only from day to day under arrangements terminable at any time; that petitioner's said transmission mains are, and for several years will be, adequate respectively for the transmission from Mattoon of all the natural gas requirements of Charleston and Paris and communities to the east, and the transmission from Mattoon of all the natural gas requirements of Effingham and communities to the south, but that the transmission main extending from Mattoon to Charleston and Paris is not adequate for the transmission from Paris of the natural gas requirements of Charleston, Mattoon and Effingham and said communities; that the transmission from Paris to Charleston, Mattoon and Effingham and intermediate communities of the natural gas

requirements of said three last named cities and said communities would necessitate the installation by petitioner of additional transmission facilities between Paris and Mattoon which would require a large capital expenditure on the part of petitioner; that such additional capital expenditure, together with additional operating costs by way of depreciation, maintenance, taxes, etc., as will necessarily be in- [fol. 24-4] cident to such additional transmission facilities, and the resulting additional burden upon the public served by petitioner in said cities and communities, will be wholly eliminated by the procurement by petitioner, at or near the City of Mattoon, of all petitioner's gas requirements for the above named cities and intermediate communities.

That the Illinois Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, furnishing and offering to furnish to Illinois natural gas distributing public utilities at wholesale, delivered at suitable points at or near the mains of said distributing utilities, the natural gas required by such distributing public utilities for distribution by them in their public utility natural gas operations; that petitioner has requested the Illinois Natural Gas Company to furnish it, delivered at or near the City of Mattoon, under said Illinois Natural Gas Company's regularly filed rates and subject to its approved rules, regulations and conditions of service, petitioner's natural gas requirements for the four aforesaid cities and their intermediate communities; and that the Illinois Natural Gas Company has advised petitioner of its willingness to install the necessary equipment and to furnish petitioner with all of its aforesaid natural gas requirements at the City of Mattoon on the terms aforesaid, if the same can be legally accomplished.

That petitioner has requested the Illinois Natural Gas Company to itself make application, or to join with peti- [fol. 24-5] tioner in making application, for an order of Commission authorizing the furnishing by it of petitioner's aforesaid requirements on said terms, but that said Illinois Natural Gas Company refused, or to date has taken no steps, to do so; that petitioner is advised that it will be necessary for the Illinois Natural Gas Company, in order to furnish the aforesaid service, to construct and put in operation a main leading from a point on petitioner's system at Mattoon to the supply of the Illinois Natural Gas Company some eighteen miles northwardly from said city; that petitioner's

need for a supply of natural gas at the City of Mattoon adequate to its uses is urgent and should be met prior to the winter season of this and the coming year; that petitioner's aforesaid requirements are permanent and will increase from year to year; that said requirements fully justify petitioner's request to Illinois Natural Gas Company for said service; that petitioner is willing to abide by all lawful rules, regulations, terms and conditions in respect to the furnishing of said service and is financially well able to pay for said service; that the rendition of the said service by Illinois Natural Gas Company to petitioner will be of benefit to the public and is reasonably necessary to the convenience thereof; and that, as petitioner is informed and believes, no good or lawful reason exists for any delay on the part of the Illinois Natural Gas Company in preparing for and rendering said service.

Petitioner therefore asks that the Illinois Natural Gas Company be made a party to this proceeding, and prays [fol. 24-6] that the Commission by appropriate order direct the Illinois Natural Gas Company to furnish to petitioner, not later than such reasonable date as shall be fixed by the Commission, a supply of natural gas delivered at or near the City of Mattoon, Illinois, adequate to petitioner's natural gas public utility needs in the aforesaid cities and communities, and that said Illinois Natural Gas Company be authorized and directed to do all things necessary to the carrying out of such direction.

Verification of foregoing application by E. F. Kelly, Vice-President of Central Illinois Public Service Company.

Application set for hearing June 6, 1939, and parties advised by letter.

Answer to Application before Commission

Answer filed by Respondent on June 2, 1939, abstracted as follows:

I. That Respondent is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, a Delaware corporation, hereinafter referred to as "Eastern"; that Eastern owns a natural gas transmission system which extends from the Amarillo gas field in the Panhandle area of the State of Texas and from the Hugoton gas field in Southwestern Kansas and Oklahoma through the States of Oklahoma, Kansas, Missouri and Illinois to a point near Dana, Indiana,

adjacent to the Illinois-Indiana state line; that Eastern produces and purchases natural gas at said source of supply, transports the same through its main transmission line, [fol. 24-7] and, in some instances, through lateral or branch lines extending therefrom to the various points of delivery where said natural gas is delivered to its various customers. That near, Dana, Indiana, Eastern's main transmission line connects with the natural gas transmission line of Michigan Gas Transmission Corporation, which line extends from said point near, Dana, Indiana, to a point near Detroit, Michigan.

II. Respondent owns and operates various lateral or branch pipe lines extending from the transmission facilities of Eastern to the points where deliveries of gas are made by Respondent to its various customers in the State of Illinois; that under a written contract between Respondent and Eastern, dated June 30, 1938, Respondent purchases all natural gas required by it for delivery to its customers in the State of Illinois and deliveries from Eastern to Respondent are made at the several points of connection between Respondent's lateral or branch lines and the transmission facilities of Eastern.

III. Respondent further represents that prior to connecting its lateral lines with the facilities of any of its customers, Eastern had knowledge of its proposed delivery and sale, the date upon which service would be required, the estimated daily demand of the customer involved, and of the various circumstances with respect to the peak demands of such customer. That Eastern in packing its transmission line from day to day with natural gas from said sources of [fol. 24-8] supply, estimates the quantities of natural gas which will be required by all of its customers, including Respondent, in the various states in which it sells natural gas and thus continuously transports sufficient gas to satisfy the requirements of all of its customers; that the quantities of natural gas necessary to satisfy Respondent's requirements are transported continuously by Eastern from said sources of supply to the various points of delivery where it is delivered to Respondent, and such deliveries are made without reduction in pressure, and Respondent, without breaking the continuity of transportation, carries said gas continuously through its lateral lines with only such reduction

in pressure as is calculated to effectuate the most economical transportation to its customers; that from day to day the requirements of all of Respondent's customers are estimated in advance to enable Eastern to deliver to Respondent the necessary quantities of natural gas from day to day to fulfill the requirements of said customers of Respondent; that in this manner natural gas which is contracted for by Respondent before the gas leaves the ground at the sources of supply of Eastern is appropriated, in a practical sense, to Respondent's various customers and is carried continuously and at high pressures through the facilities of Eastern and Respondent to its various destinations without unnecessary treatment, without break in transportation thereof, and without storage, intermediate or otherwise.

IV. That the manner of effecting delivery to Respondent's customers in the State of Illinois, as above described, [fol. 24-9] is the daily, normal, contemplated and followed course thereof, and that all natural gas it delivers to its customers from the time it leaves the ground at the sources of supply until delivered into the facilities of its customers is in the course of transportation in interstate commerce; that despite this fact the Congress of the United States, prior to the spring of 1938, had not exercised the power, vested in it by Article I, Section 8, Clause 3 of the Constitution of the United States, to regulate the interstate transportation of natural gas, and, therefore, Respondent and its predecessor, Panhandle Illinois Pipe Line Company, have, in the past willingly submitted to the jurisdiction of the Commission with respect to the transportation, delivery and sale of natural gas in the State of Illinois.

V. That in the spring of 1938 the Congress of the United States enacted the "Natural Gas Act" into law and the same became effective on June 21, 1938; that under the provisions of said Act, the Federal Power Commission is given broad powers of regulation over the transportation and sale for resale of natural gas in interstate commerce; that since said Act became effective Respondent has been ordered by the Federal Power Commission to file all of its contracts, rate schedules, and rules and regulations with said Commission, with which order Respondent has complied, and has been advised by the Federal Power Commission that it is a natural gas company within the meaning of said Act.

[fol. 24-10] That Section 7, subparagraph (c) of said Natural Gas Act, provides, in part, as follows:

"No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities or sell natural gas in any such market unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof. * * *"

VI. Respondent states on information and belief that the natural gas requirements of the cities and communities referred to in the application of Petitioner are now, and have for several years, been obtained from Universal Gas Company at a point near the Illinois-Indiana state line where the facilities of Petitioner connect with the facilities of said Universal Gas Company; and that for Respondent to construct a pipe line to the facilities of Petitioner and sell natural gas to it and thus enter and serve a territory now being served by another natural gas company and engage in transportation by means of new and additional facilities without complying with Section 7, subparagraph (c) of said "Natural Gas Act," would be a direct violation of said Act and unlawful and would subject Respondent to severe penalties provided for therein.

[fol. 24-11] VII. That since the Congress of the United States has exercised its right to regulate the transportation and sale of natural gas in interstate commerce and has delegated extensive regulatory powers to the Federal Power Commission, the jurisdiction of said Federal Power Commission over the Respondent with respect to all matters involved in Petitioner's application is exclusive, and that this Commission is without jurisdiction over Respondent with respect to such matters and is without power or authority to regulate the transportation, delivery, and sale of natural gas by Respondent.

That it has informed Petitioner that, subject to the approval of Respondent's Board of Directors, it is willing to

construct the necessary pipe line to connect with Petitioner's pipe line and distribution system at Mattoon, Illinois and to furnish natural gas to Petitioner for all of its natural gas requirements for resale in Mattoon, Charleston, Effingham, and other communities, (except the City of Paris) connected to its existing pipe line and distribution systems in said cities if the same can be accomplished legally, such sale and delivery to be made at Respondent's regular filed rates and subject to its filed rules, regulations and conditions of service and to continue for a period of not less than ten years; that such construction and service cannot be accomplished legally without Respondent first procuring a certificate of convenience and necessity therefor from the Federal Power Commission.

[fol. 24-12] Respondent prays that Commission dismiss Petitioner's application for lack of jurisdiction over Respondent and the subject matter of this proceeding or, in the alternative that Commission enter an order denying Petitioner's application for the same reasons.

Verification by G. J. Neuner, Vice President of Illinois Natural Gas Company.

Recital as to Hearing Before Commission

Case called on June 6, 1939, and heard by Chief Examiner Farrell, and continued to June 21, 1939, at Springfield for further hearing. The evidence reported at the hearing on June 6, 1939, is here abstracted, together with that given at the continued hearing on June 21, 1939.

Statement of Evidence Before Commission

A. D. Stevens, Springfield, Illinois, entered his appearance for the Petitioner. G. W. Clark, 101 West 11th Street, Kansas City, Missouri, entered his appearance for the Respondent.

Statement of Mr. Clark for Respondent

Mr. Clark stated that, under the Natural Gas Act passed by the Congress of the United States in the Spring of 1938, the Federal Power Commission has jurisdiction of the Respondent Company as completely as has been exercised theretofore by the Illinois Commission, and such situation puts the Respondent Company in the position of trying to

serve two masters. He further stated that, as an example, in this particular case, if the Illinois Commission should order the Respondent to serve the City of Mattoon and the other cities, it would have to build a line approximately eighteen miles in length, which it believes would be a direct [fol. 24-13] violation of the Natural Gas Act unless a Certificate of Convenience and Necessity was first procured from the Federal Power Commission.

Mr. Clark pointed out that for several years the Panhandle Illinois Pipe Line Company operated in Illinois as the predecessor to the Illinois Natural Gas Company, the Respondent herein, and that the basic and essential facts as to both companies are the same with respect to whether or not they were and are engaged in interstate commerce. The Respondent Company now feels that it is in a very precarious position, being subject to two Commissions claiming the same jurisdiction and therefore it must now raise the question.

STIPULATION RE ANSWER OF RESPONDENT

The parties thereupon stipulated that all matters alleged in the foregoing Answer of Respondent, filed June 2, 1939, would be testified to by Mr. Neuner, and that said Answer might go into the record as the testimony of Mr. Neuner, subject to objections as to materiality and pertinency and conclusions of law.

Answer of Respondent, filed June 2, 1939, read into the record.

TESTIMONY OF G. J. NEUNER

Mr. G. J. NEUNER, called as a witness on behalf of the Respondent, testified as follows:

I am Vice President in charge of operations of the Panhandle Eastern Pipe Line Company and the Illinois Natural Gas Company, and have been, for approximately four years, Vice President of the Panhandle Company, and have been an officer of Respondent since July, 1938.

[fol. 24-14] The Panhandle Eastern Pipe Line Company is organized under the laws of the State of Delaware and has its principal business office in Kansas City, Missouri.

Respondent is organized under the laws of the State of Illinois and has its principal business office in Kansas City, Missouri.

The Panhandle Company owns and operates gas leases in Texas, Oklahoma and Kansas and drills wells and produces gas in those areas, as well as purchases natural gas from other producers in those areas. It owns and operates the natural gas transmission line commencing at a point in Moore County, Texas, extending northward through the Panhandle of Texas and the Panhandle of Oklahoma into the State of Kansas at a point near Liberal, Kansas. At that point the Texas line joins two other main gathering lines from points in the Hugoton field in Southwestern Kansas, the three gathering lines converging at a point near Liberal.

From that point the main transmission line of Panhandle Eastern Pipe Line Company extends in an easterly direction through the State of Kansas, crossing the Missouri-Kansas State line about thirty-five miles south of Kansas City, enters the State of Missouri, crosses the State of Missouri and enters the State of Illinois at a point near Louisiana, Missouri. At that point the main line extends across the State of Illinois to a point in the State of Indiana near Dana, Indiana. This main transmission line of the Pan- [fol. 24-15] handle Eastern Pipe Line Company is used in the transportation and delivery of natural gas along this route, and to a connecting pipe line near Dana, Indiana.

The Illinois Natural Gas Company is a natural gas transmission pipe line company operating in the State of Illinois. Its property consists of lateral lines which connect with the transmission facilities of the Panhandle Eastern Pipe Line Company in Illinois, from whom it purchases its requirements of natural gas for resale in that State. The Respondent owns a number of lateral lines, all of which, with the exception of one, connect with the main transmission line of the Panhandle Eastern Pipe Line Company at points within the State of Illinois. The exception to which I referred is the lateral line which it owns and operates and uses to serve gas at the City gate of Quincy, Illinois. That lateral line connects with a lateral line owned by the Panhandle Eastern Pipe Line Company at a point on the east bank of the Mississippi river some distance below Quincy. This lateral line to which the Quincy lateral connects takes off from the main line of the Panhandle Eastern Pipe Line

Company in the State of Missouri at a point south of Hannibal.

When I refer to Kansas City, I mean either Kansas City, Missouri, or Kansas City, Kansas, as it is about the same distance from both cities.

Panhandle Eastern Pipe Line Company makes sales for deliveries of gas to other distributing utilities along the route of its pipe line company at town borders, deliveries [fol. 24-16] being made through measuring stations owned by the company. In addition to sales to distributing utilities, engaged in the business of distributing natural gas at retail to the public, Panhandle Eastern Pipe Line Company also sells at point of connection with Illinois Natural Gas Company lateral lines with its main line, such amounts of natural gas as Illinois Natural Gas Company requires for resale to distributing utilities in the State of Illinois. It also sells gas to other pipe line companies where deliveries are made at our measuring station near Dana, Indiana. At that point it also delivers substantially large quantities of natural gas to a corporation known as the Michigan Gas Transmission Corporation, which acts as gathering agent for Panhandle Eastern Pipe Line Company, and transmits or transports gas to the City of Detroit, Michigan. It also sells gas to a corporation known as the Kentucky Natural Gas Company operating in the States of Indiana and Kentucky. This delivery is also effected at the Dana measuring station in Indiana.

Dana is a few miles east of the Illinois-Indiana state line, but the measuring station is located on a plot of ground in Indiana immediately adjacent to the state line. To be specific, the facilities of the Panhandle Eastern Pipe Line Company owned and operated by it extend perhaps one hundred and fifty or one hundred and seventy-five feet into the State of Indiana, at which point this measuring station is located.

[fol. 24-17] In addition to the above mentioned deliveries, Panhandle Eastern Pipe Line Company sells gas to a number of large industrial customers in the State of Missouri.

Illinois Natural Gas Company's business consists generally of the purchase of natural gas at the point where its lateral lines connect with the Panhandle Eastern Pipe Line Company, and the transportation and delivery of such gas through these lateral lines to gas distributing utilities in the State of Illinois. These deliveries are generally and

usually made through town border measuring stations at or near the city limits of the cities where the distributing plants are located.

In addition to making deliveries to distributing utilities, I believe Respondent serves either four or five industrial customers directly, these customers being located at points along its lateral lines south of the City of Quincy, Illinois.

The Panhandle Eastern Pipe Line Company is not engaged in the direct distribution of gas to the public at any place.

In all cases sales by the Panhandle Eastern Pipe Line Company are made under contracts executed either in Kansas City or New York before any deliveries of gas are made.

Commencing in the field where the gas is produced, the pressure of the main gathering lines, of course, is ordinarily at pressure. That pressure drops before it reaches the [fol. 24-18] first compressing station. As I recall, the suction pressure at Liberal Station is somewhere around 225 pounds. The discharge pressure at Liberal Station is around 450 pounds. Without describing the suction and discharge pressure at each of the ten or eleven compressing stations, generally speaking, the pressure in the main line varies from a discharge pressure at the compressor station of about 450 pounds to a suction pressure at the next station of around 225 to 250 pounds.

I could not state what the mean pressure is. There is a natural pressure drop due to friction, the taking of gas out and other reasons.

Asst. Comr. Farrell: Is the purpose of this testimony to show that this is a high pressure line?

Mr. Clark: To show not only that it is a high pressure line, but to show that it is not a distributing line or a low pressure line which is regulated to serve various customers on their demand and to serve gas available for use and utilization at that pressure.

Deliveries by Panhandle Eastern to Respondent are made at main line pressure with the exception that the deliveries into the Quincy lateral are not necessarily made at main line pressure because delivery is through a lateral owned by the Panhandle Eastern Pipe Line Company.

Respondent, after receiving the gas at main line pressure, reduces the pressure in its lateral lines in order to effect

[fol. 24-19] the most economical transportation of that gas to the customer served from that lateral.

Neither the Illinois Natural Gas Company nor the Panhandle Eastern Pipe Line Company owns or operates any holders or other equipment for the storage of gas, where gas may be obtained readily by anyone seeking gas in a condition ready for utilization.

Respondent's Exhibit No. 1, which was a conforming copy of a gas contract between Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, dated as of June 30, 1938, was admitted into the record.

Said Contract was approved by the Illinois Commerce Commission by order entered on June 15, 1938 in the proceeding involving a partial liquidation of the Panhandle Illinois Pipe Line Company (No. 26563).

Respondent's Exhibit No. 2 is a map showing the main transmission system of the Panhandle Eastern Pipe Line Company and the Illinois Natural Gas Company, including the various lateral lines connecting thereto. The Transmission system and lateral lines of Panhandle Eastern Pipe Line Company are shown by black lines. The pipe line system of Respondent is shown by red lines. The Green line connecting from Panhandle Eastern Pipe Line Company main line near the Illinois-Indiana State line and extending generally in a northeastern direction to Detroit is the connecting line owned by the Michigan Gas Transmis-[fol. 24-20] sion Corporation, which is I understand, a wholly owned subsidiary of the Columbia Gas and Electric Corporation. Exhibit No. 2 received in evidence.

Before connection is actually made to the facilities of each customer of the Panhandle Eastern Pipe Line Company, it had knowledge of the approximate date of first delivery, the demands of the customer and pertinent data with respect to its peak load demands. This was necessary because the Panhandle Eastern Pipe Line Company had to provide for enough gas in the field and to make arrangements to connect enough openflow to provide the quantity of gas required at the market to serve the customer.

The Panhandle Eastern Pipe Line Company had knowledge as to the demands, the peak load requirements and date of first delivery for Respondent's customers before those customers were actually served by Respondent.

The source of supply of gas is in Texas, Southwestern Kansas and Oklahoma.

In packing the line, the pressure dispatcher estimates in advance each day the requirements of all of the customers of the Panhandle Eastern Pipe Line Company and Respondent and packs the estimated requirements of the customers. From day to day the customers of these companies receive gas without any break in transmission from the source of supply to the point of connection between the facilities of the Panhandle Eastern and its customer and also to the [fol. 24-21] point of connection between Respondent's facilities and Respondent's customers' facilities.

There is a reduction in pressure as the gas enters the lateral line. I testified previously that that reduction is in such amount as to effect the most economical transportation of the gas through the lateral line to the customer. The pressure in the lateral line varies with the length of the line, the size of the line and the market requirements of the customers served from the lateral line. But in no case is the pressure reduced to a point where the gas is usable without further reduction of pressure by the ordinary retail consumer. In every instance the distributing utility cuts the pressure further after delivery is made into its plant. I am not in a position to answer the Examiner's question as to what the pressure is reduced to in these laterals in Illinois, for the pressure itself varies with the different sizes and lengths of lateral. Ordinarily I would say the pressures are cut to something in excess of 125 pounds. This is a general statement. I suppose on the Peoria lateral line it would be a great deal higher. On the lateral lines where it is a short distance from the main line to point of ultimate delivery, the pressure might be somewhat less than 125 pounds.

I will say there is a continuous movement of the gas from the field to the point of delivery to the customer. To the best of my knowledge, no deliveries are made but what before the gas is actually utilized, the customer or dis- [fol. 24-22] tributing company, as the case may be, effects a further reduction in the pressure.

The procedure in packing the lines for the customers of the Panhandle Eastern Pipe Line Company and the Respondent is briefly this. We have in our general office at Kansas City a man who is charged with the duty and responsibility of dispatching pressure through our line. This employee estimates from day to day, from weather reports

and various reports we have and from estimates we have from the various customers connected to our system, just how much gas will be required to serve those customers from day to day.

After our pressure dispatcher has from the various sources of information that I have mentioned, estimated the amount of gas which the customers of the Panhandle Eastern Pipe Line Company and the Respondent may require from day to day, he issues his order to the men in the field to turn a sufficient amount of gas from the wells into the line from day to day to meet the requirements of all of these customers. This is the daily, normal course of operation.

If additional supply of gas is needed, a man locally located in the field is sent out to open up wells, which might take an hour or a few hours depending upon the distance. In case of emergency, he would turn on the nearest well.

The Panhandle Eastern Pipe Line main was tested within the last year and we feel it has a safe working pressure of [fol. 24-23] a maximum of around 500 pounds. At our booster stations, with our present equipment we have raised the pressure to something in excess of 470 pounds in a few cases.

On Respondent's Exhibit No. 2, the lateral lines leading off of the Panhandle Eastern Pipe Line Company's main transmission lines in the State of Missouri, which appear to be very similar to those leading off of its line in Illinois, are owned by the Panhandle Eastern. The operations of the Panhandle Eastern in delivering gas through its main line and to its customers at the end of the branch lines in Missouri and the reduction of pressure is no different from the operation and reduction of pressure of deliveries in Illinois.

The lateral line from the Panhandle Eastern main line west of the Mississippi river, extending northward to Hannibal and across the river toward Quincy is owned by the Panhandle Eastern to a point on the east bank of the river, at which point it connects with a lateral line owned by the Illinois Natural Gas Company, which extends from that point of connection to the town border measuring station south of the city limits of Quincy.

The pressure at which the gas comes to the Illinois Natural Gas Company at a point near Quincy from the Panhandle Eastern is the same pressure at which the Illinois

Natural Gas Company carries it through their own main until delivered to Petitioner.

If a customer in any particular case at the end of a lateral line was the only customer on the entire system, [fol. 24-24] there would probably be no necessity for reducing the pressure after it left the main transmission line of the Panhandle Eastern, because the main line would not carry any more pressure than necessary to supply that particular customer. The high pressure carried on the main line,—being higher than in any particular lateral line,—is because there is more gas going to other customers of the Illinois Natural Gas Company or of the Panhandle Eastern. If, for example, the Peoria lateral were the end of the system, there would be no reason for carrying any higher pressure in the main line at the point where the Peoria lateral connects to the main line than is necessary to supply the customers receiving service from the Peoria line. But we carry higher pressure in the main line at the Peoria lateral because further east there are other customers in addition to those on the Peoria lateral depending on gas supplies.

Upon stipulation Mr. Neuner read into the record that portion of Section 7, Paragraph (c) of the Natural Gas Act that is copied in the Response of Respondent.

Respondent's Exhibit No. 3, being Federal Power Commission Order No. 53, dated July 5, 1938, received by the Panhandle Eastern Pipe Line Company, was admitted into the record.

Respondent has complied with said order and filed its rate schedules, rules and regulations and all other matters contained therein with the Federal Power Commission. [fol. 24-25] (Objection by Mr. Stevens as to materiality. Asst. Com. Farrell, "It may stand.")

Respondent's Exhibit No. 4 is a photostatic copy of a letter addressed to the Illinois Natural Gas Company from the Secretary of the Federal Power Commission, dated April 18, 1939. In substance it states that the Federal Power Commission holds that the Respondent is a natural gas company within the meaning of the Natural Gas Act and is required to comply with the provisions of the Act, including the filing of rate schedules.

End of examination of Mr. Neuner.

Petitioner's Exhibit A, being copy of order issued by Illinois Commerce Commission in Docket No. 21882, in which

Commission refused to approve contract entered into by the petitioning company and Universal Gas Company, and ordered Petitioner to take steps to procure a source of supply of gas, was admitted. Petitioner's Exhibit B, being copy of order of Commission in Docket No. 26563, dated June 15, 1938, wherein Panhandle Illinois Pipe Line Company, predecessor company of Respondent, sought the approval of contract and transfer of stock to the Panhandle Eastern Pipe Line Company, with exhibits attached, was admitted into the record. (Objection by Mr. Clark to relevancy of both exhibits overruled.)

TESTIMONY OF E. F. KELLY

MR. E. F. KELLY, called as a witness on behalf of the Petitioner, testified as follows upon examination by Mr. Stevens:

I am, and have been since January, 1932, Vice President [fol. 24-26] of the Central Illinois Public Service Company. Before 1932 I was connected with the company as assistant to the Vice President and prior thereto as Division Manager of Division M, with headquarters at Mattoon. I had full charge of the operations in Division M which embraced all the territory here in question and the various cities and towns involved in this proceedings. I have been with the company since 1919. My experience with the company has had to do with the operation of gas utilities.

The Petitioner is an Illinois corporation and in its gas operations is a public utility subject to the jurisdiction of the Commission. In my opinion the Respondent is also subject to the jurisdiction of the Commission.

The Petitioner has operated gas utilities in the cities of Mattoon, Charleston and Paris since it was organized about twenty-six years ago, and in Effingham since about 1930. These cities and smaller intermediate communities are classed by us as the Mattoon Group and is independent, insofar as gas connections are concerned, with any other group operated by the company. The population of the various cities and communities concerned, taken from the 1930 census: Charleston, 8012. Paris, 8781. Kansas, 900. Ashmore, 431. Mattoon, 14,631. Neoga, 995. Effingham, 4,978. Sigel, 259. Total, 38,987. Charleston is east of

Mattoon; Paris is east of Charleston. Mattoon is about twelve miles from Charleston; and about forty miles from Paris. Paris is approximately on a direct east line from [fol. 24-27] Mattoon. Effingham is south and a little west about 26½ miles from Mattoon. Kansas and Ashmore are east of Charleston and are intermediate to Mattoon and Paris. Neoga and Sigel are intermediate between Mattoon and Effingham.

The gas sales at Paris for 1938 totaled 30,112,500 cubic feet. Charleston, 29,648,100 cubic feet. Kansas, 1,058,800 cubic feet. Ashmore 135,900 cubic feet. Mattoon, 78,856,600 cubic feet. Neoga 924,900 cubic feet. Effingham, 16,967,900 cubic feet. Sigel, 252,700 cubic feet. A total of 157,958,400 cubic feet, for the calendar year 1938. This was natural gas provided from the Universal Gas Company with a 950 b.t.u. content.

As of December 31, 1938, we had at Paris, 1,210 customers. At Charleston, 1,040 customers. At Kansas 52 customers. At Ashmore 12 customers. At Mattoon, 2,330 customers. At Neoga 49 customers. Effingham 529 customers. Sigel, 11 customers. A total of 5,233 customers as of that date. The volume of gas required for these customers is increasing. We began to serve natural gas in 1932. There has been about a 100% increase in amount used since 1934. Recently we have made no particular attempt to increase the growth of our business. House heating by gas in our towns is increasing rapidly but we haven't pushed sales in this group of towns because the main between Charleston and Paris is overloaded during winter when house heating load would be on and we did not wish to render any more house heating load with the facilities we now have.

[fol. 24-28] The mains connecting these towns are all four inch mains, being about forty miles long from Paris to Mattoon and about 26½ miles long from Mattoon to Effingham. The Mattoon-Charleston main was installed originally about twelve years ago, the one from Charleston to Paris eleven years ago, and the one from Mattoon to Effingham nine years ago.

The Charleston-Paris main is a continuation of the Mattoon-Charleston main, and they are all four inches.

At the time these mains were installed we were furnishing artificial gas, the plant being located in each town where we were serving gas—Mattoon, Charleston and Paris. Sub-

sequently, in order to make all of the gas for Charleston and Mattoon at Mattoon, we extended a gas main connecting these two towns. The same reason motivated the extension of the main to Paris. In this manner we were able to get the advantage of centralized manufacture and its resulting economies. The exact distance of these extensions is 40.24 miles.

In November, 1929, we started purchasing gas from the Indiana Consumers Gas & By-products Company who had a coke oven plant at Terre Haute and the gas was afterwards, until natural gas was furnished, supplied from that plant. That gas was brought through a six-inch main extending from Terre Haute into Paris, which was owned from Terre Haute to the Indiana state line by the Indiana Company and from the state line to Paris by our Company. [fol. 24-29] The Indiana Gas & By-products Company was later taken over by the Universal Gas Company, the change of name being made in September, 1935.

We continued using the artificial gas from the coke oven of the Indiana Company at Terre Haute until August 1932 when we began getting natural gas through the Indiana Consumers Gas & By-products Company whom, we were informed, purchased it from the Kentucky Natural Gas Company. The Indiana Consumers was the same as the Indiana Gas & By-Products Company.

The arrangement under which we started to obtain natural gas was in the form of a contract and was made subject to the approval of the Illinois Commerce Commission, which Commission subsequently disapproved the contract.

We started supplying service to Effingham in 1930 with the coke oven gas from Terre Haute.

The furnishing of natural gas to the cities in this territory has resulted in an increase over the expected amount that would have been furnished if we had continued to use artificial gas, house heating being largely responsible.

The largest output, or the maximum demand, west of Paris that we have had during a single day totaled 1,356,000 cubic feet. The four inch main between Mattoon and Paris was designed to supply the gas out of the Mattoon plant and was intended to carry not over 100 pounds pressure. It was laid in 1927, and at that time, so far as I know, there [fol. 24-30] was no pressure above 100 pounds around Illinois, that then being an unusual pressure. When you get over 150 pounds in that main it might cause trouble, but

for a day or two during the peak period we were compelled to carry more than 200 pounds as a matter of emergency. As to everyday reliance on that main, the maximum pressure should not be over 200 pounds at any time, and for day in and day out operation, not over 150 pounds. At that pressure, this main would not be able to satisfy the present heating requirements of Charleston, Mattoon and Effingham. This capacity has been very much extended and for that reason we stopped attempting to get any more business in February, 1936. Our load was not as great then, except for the emergency during the low temperature period, as it is now.

During the emergency period we carried the gas at over 200 pounds pressure. The pressure at Mattoon dropped slightly below 50 pounds which is a minimum for good operation. At 50 pounds pressure, we cannot satisfactorily get gas into Effingham under present conditions. Considering our peak load during the emergency period, I do not think an additional load could be carried in our mains on the Mattoon, Charleston and Effingham line.

If we had an adequate supply of natural gas at Mattoon, we would make an effort, such as we have made in other localities, to secure additional house heating and industrial customers. Assuming such adequate supply, in my judg-
[fol. 24-31] ment, there could be an increase of at least 20% to 25% for industrial and house heating customers. This statement is based upon our operation of other gas utilities in Central Illinois.

We do not think there is anything we can do in the way of putting in boosters which would increase the pressure and flow of gas. We have a plant at Mattoon that could be operated to supply artificial gas in the event anything should happen to the main between Charleston and Paris and Paris and Mattoon, but it would be unsatisfactory. This plant could be operated but has not been for three years as we could not make as much as 950 Btu there.

We have two holders at Mattoon, one of 500,000 cubic feet and the other of 200,000.

To build an additional four inch main from Paris to Mattoon would cost about $260,000.00. If we continue to get gas from the Paris source, there would be some maintenance and depreciation charges and other operating expenses in addition to the capital expenditures already made. We have no contract for the delivery of natural gas from

the Indiana source, but operate on a month to month basis. This is being done without any permission from the Illinois Commerce Commission or other regulatory body. We receive our supply of natural gas from day to day under an arrangement which can be terminated at any time.

The Illinois Natural Gas Company, as well as its predecessor in ownership of the lateral lines, the Panhandle [fol. 24-32] Illinois Pipe Line Company, has its public utility rates on file with the Illinois Commerce Commission under which it furnishes natural gas to other public utility distributing gas companies in Illinois.

The nearest practical point of connection on the line of the Panhandle Eastern Pipe Line Company is near Tuscola, about twenty miles north of Mattoon. Mattoon is practically the center of our gas load for that group. If we got all of our requirements at Mattoon from the Illinois Natural Gas Company, I believe the volume of business would be such as to make it profitable to the Illinois Natural Gas Company. That Company is at present serving us at other localities at a greater capital expense than would be necessary from Mattoon for a much less volume of business. In those other instances, either the Illinois Natural Gas Company, or its predecessor, built the line from the Panhandle Eastern to our distribution system at their own expense, and furnished and have continued to furnish gas at the rates on file with the Illinois Commerce Commission. This is true of four different points in the state—Canton, Hoopeston, Quincy and Taylorville.

Shortly after the order of the Commission, dated June 18, 1936 (Petitioner's Exhibit A) was issued, we caused to be brought a proceeding before the Commission with a view to requiring the Panhandle Illinois Pipe Line Company to furnish us service at Mattoon. This case was not concluded because during its progress a suit was brought by the Uni- [fol. 24-33] versal Gas Company of Indiana, the predecessor in ownership and operation of the Indiana Consumers Company, in the Federal Court for this district, to enjoin us from ceasing to receive gas from it and enjoining also the Panhandle Illinois Company from furnishing us with gas. The proceeding before the Commission was held up awaiting the outcome of this suit as to whether we had to receive gas under that contract regardless of the order of the Commission. The suit in the Federal Court finally terminated in a judgment holding that the contract was not binding.

An appeal was taken by the Universal Gas Company to the Circuit Court of Appeals and on February 3, 1939 an opinion was handed down affirming the lower court and annulling the contract. The petition for rehearing was denied on March 27, 1939. We then waited to ascertain whether a petition for certiorari would be filed to the United States Supreme Court, and while the time for filing has not yet expired, we have received fairly definite assurance that it will not be filed. This is our sole reason for not pressing our former case and not applying earlier for service from the Illinois Natural Gas Company. We have dismissed the other application before the Commission.

We took up with Mr. Neuner, as a representative of the Illinois Natural Gas Company, at a meeting in Chicago within the past two months the matter of securing service from the Company. Mr. Neuner did not object to the furnishing of gas for this group and delivering it at Mattoon [fol. 24-34] if it could be done legally, but he took the position that the application therefore should be made to the Federal Power Commission, because we were receiving gas from across the state line. We proposed to enter into an agreement subject to the approval of the various bodies that might have jurisdiction. Mr. Neuner said he would consider it and let us know. About ten days later at a meeting in Springfield we proposed to Mr. Neuner that we agree on a contract and that it first be presented to the Illinois Commerce Commission for their approval, with the right in the Illinois Natural Gas Company to present it to any other body it thought might have jurisdiction. This proposal was rejected.

It was then suggested by us that a contract be drawn without signatures and presented by the two companies to the Illinois Commerce Commission for its approval, with a prayer for authority to execute it and carry it out, containing, however, the same information that it would be subject to the approval of any governmental body having jurisdiction in the premises. This suggestion was met with refusal and a request to consider it further.

Petitioner's Exhibit C, received in evidence, is a copy of a letter, dated May 4, 1939, addressed to the Central Illinois Public Service Company, to my attention, signed by the Illinois Natural Gas Company, Mr. G. J. Neuner, Vice-President.

Petitioner's Exhibit D, received in evidence, is a copy of a letter, dated May 8, 1939, addressed to the Illinois [fol. 24-35] Natural Gas Company, attention Mr. G. J. Neuner, Vice-President, signed by me as Vice-President of the Central Illinois Public Service Company, in response to Exhibit C.

Petitioner's Exhibit E, received in evidence, is a copy of a letter, dated May 11, 1939, to the Central Illinois Public Service Company, to my attention, from G. J. Neuner, Vice-President of Illinois Natural Gas Company, in answer to Exhibit D.

During these negotiations with Mr. Neuner, we at all times offered to comply with all the requests made by the Illinois Natural Gas Company as to volume, term and other matters, and there was no difference between us and the Company as to such.

In the event we are able to obtain the supply of natural gas at Mattoon, for which we apply in this proceeding, we would then be in a position to increase our gas load in this group. The four-inch main would be adequate to serve Charleston and Paris for many years to come, but, assuming that all our gas came through Paris, it would not be adequate for the larger load at Charleston, Mattoon and Effingham and is not adequate today. It would require the expenditure hereinbefore mentioned and the additional maintenance and depreciation charges and other operating expenses for its upkeep, which would be a burden on our customers in those communities. This burden would be eliminated if we could secure our supply of gas in the City of Mattoon. The question is, then, largely one of the welfare [fol. 24-36] of the consumers in those communities.

Based on strict law, it would be immaterial to us, with an adequate rate covering our capital expenditures and operating expenses, whether we built the additional main continuing from Paris or went to Mattoon, because the burden would fall on the customer. All the hazards of this line, since it is adequate from Mattoon to Paris, would be removed through this connection for at least ten years.

In our conversation with Mr. Neuner, it was stated that the arrangements under which the Illinois Natural Gas Company would furnish the gas at Mattoon, aside from any question of jurisdiction, would be the same as it is under which they now furnish us gas at four other points, with

the exception they were in a position to supply the money to build the line to Mattoon, whereas in other instances the money was procured by a loan from us and then repaid. The exact terms and conditions are contained in Exhibit C.

The Gas company and its predecessor have always been willing to serve us in accordance with its policy and general arrangements. This company serves a number of other distributing companies in Illinois, it being their business to furnish gas to any such company for which they have the capacity.

I have ascertained just recently from our own engineers at what approximate pressure the Illinois Natural Gas Com- [fol. 24-37] pany carries the gas in its mains and where the increase or decrease in pressure takes place.

The first of our towns which the Illinois Natural Gas Company serves, outside of Canton, is the Taylorville lateral. The reducing apparatus for reducing the pressure of the gas carried by the Panhandle Eastern Pipe Line Company and received by the Natural Gas Company is immediately adjacent to the main of the Panhandle Eastern. We also get gas on this line at Hoopeston. The Illinois Natural carries gas at about 125 to 150 pounds pressure right after delivery. There is a reduction made by the Illinois Natural Gas Company after it is first brought into its mains.

There are some places where the Illinois Natural Gas Company makes as low a reduction in pressure as 95 to 100 pounds, but not to our company. Except at Quincy, there is no place in Illinois where the Illinois Natural Gas Company does not make a very substantial reduction of the pressure carried on the Panhandle Eastern lines immediately after they receive it. The reduction stations are all immediately adjacent to the Panhandle Eastern lines.

There is a further reduction in pressure made by the Illinois Natural Gas Company when gas is delivered to the Illinois local gas distributing utilities. At Taylorville we receive it at about 80 pounds and at Hoopeston at about 40 pounds.

Assuming at the Mattoon end that the proposed main is [fol. 24-38] installed and filled with gas, that there were no outlets other than at Mattoon, that the outlet at Mattoon were closed, and that during the day there were periods of an hour or two when there was no gas moving through that lateral, the gas moving through the Panhandle Eastern

main line would not cause the gas to move in this Mattoon lateral. If there are times when there was no demand at the outlet into our distribution system for gas, the gas in the Illinois Natural Gas Company's line would remain static and motionless.

The only information I have as to the ownership of the Panhandle Eastern or Illinois Natural Gas Company is what I have read in the papers. It is my understanding that the Columbia Oil & Gasoline Corporation is owned by the Columbia Gas & Electric Corporation. (Objection by Mr. Clark as to qualification of witness overruled.) It is my understanding that the Universal Gas Company is either owned by or has very definite contract relations with the Kentucky Natural Gas Company. (Same objection by Mr. Clark overruled.) It is my understanding that the Kentucky Natural Gas Company is completely owned by the Missouri-Kansas Pipe Line Company. (Same objection by Mr. Clark overruled.)

I understand that a substantial part of the gas we now get from the Universal Gas Company is taken off the lines of the Panhandle Eastern Pipe Line Company in Indiana, thrown into the line of the Universal in Indiana, and then piped back across the Indiana-Illinois line to our Company. [fol. 24-39] In the last month or so I have had conversations with a Mr. Hillman who represented himself as controlling the Universal Gas Company. From these conversations I got the impression that some influence, either in the directors or ownership, was seeking to compel us to continue to take gas from the Indiana source rather than from the Illinois Natural Gas Company. I, however, acquit Mr. Neuner or any of the present officers of any collusion, but not the operating force. I do not know whether the Universal Gas Company is affiliated in any way with the Panhandle Eastern Pipe Line Company.

Mr. Hillman stated to me and the President of our Company that such gas as was not sent to us from the lines of the Panhandle Eastern Pipe Line Company across the Indiana line was procured from the Kentucky Natural Gas Company, and that if the Universal could not get it all, it wanted as big a part as it could get.

All the gas which we obtained from the Illinois Natural Gas Company or its predecessor and all we will obtain for our Mattoon group will in turn be furnished to the ultimate consumers by us in our capacity as a gas public utility,

subject to the regulations, rules and rates established by the Illinois Commerce Commission.

Stipulation by counsel that the Respondent has rates on file with the Illinois Commerce Commission under which it offers to sell natural gas to distributing companies within its territory.

[fol. 24-40] CROSS-EXAMINATION OF MR. KELLY BY MR. CLARK

I have already stated that it would require the construction of about eighteen or twenty miles of line by the Illinois Natural Gas Company in order to supply us at Mattoon. The delivery to us by the Universal Gas Company is made right at the Illinois-Indiana line. We own the line from there to Paris. I understand that the Universal Gas Company obtains its supply of gas from the Kentucky Natural Gas Company and the Panhandle Eastern Pipe Line Company. I have been told by numerous people, including Mr. Hill and the local office of the Illinois Natural Gas that the Kentucky Natural Gas Company purchases gas from the Panhandle Eastern.

In the various conversations I have had with Mr. Neuner, our disagreement was primarily as to the method of procedure.

The statement I made concerning the proposed line to Mattoon was based purely upon an assumption that if the end of a line was closed, the gas in the lateral might stop while the gas in the main line would continue but I did not mean to infer that such a condition actually exists in the line at any point on the Illinois Natural system. If you closed the end of a main line, it would stop the gas. I do not know exactly the location of the regulators of pressure in the lateral lines of the Illinois Natural, but it is my information they are close to the main.

The pressure I gave at particular towns, or in the laterals leading to particular towns, did not vary greatly from those [fol. 24-41] given as general pressure carried in different lateral lines by Mr. Neuner. In Taylorville gas was delivered to the distributing company at 80 pounds but is not utilized by our customers at that pressure.

From notices in the paper, I understand that the Kentucky Natural Gas Company has discontinued buying gas in Illinois and putting it into its line. I understand that the Kentucky Natural is still receiving gas from Kentucky

and so far as I know the gas coming to Paris and Mattoon from this line could come either from Kentucky or Panhandle Eastern, or a mixture of the two.

RE-DIRECT EXAMINATION OF MR. KELLY BY MR. STEVENS

It was always Mr. Neuner's suggestion that we join with him first in an application to the Federal Power Commission for permission for the Illinois Natural Gas Company to serve us with gas. Our refusal to accede to his request to first go to the Federal Power Commission and our insistence that the proceeding be first brought before the Illinois Commerce Commission was explained to him as being that we were subject to the latter Commission and did not consider the Federal Power Commission as having jurisdiction over our company. We also feared if we acknowledged the jurisdiction of the Federal Power Commission by joining in that proceeding, that proceeding would be subject to appeal in the Federal Court in Washington and might be subject to very long litigation, and we would be [fol. 24-42] acquiescing in the jurisdiction of the Federal Power Commission over our Company.

RE-CROSS EXAMINATION OF MR. KELLY BY MR. CLARK

We consistently refused to first go before the Federal Power Commission to determine whether that Commission would actually exert jurisdiction. Mr. Neuner did consistently take the position that we would gain nothing by first going to the Illinois Commerce Commission without having the question settled as to whether we would be in contempt of the Federal Power Commission. We never questioned Mr. Neuner's good faith in the matter.

FURTHER RE-DIRECT EXAMINATION OF MR. KELLY BY MR. STEVENS

In answer to Mr. Neuner's suggestion that it might be considered contempt by the Federal Power Commission to first secure an order from the Illinois Commerce Commission, we proposed that an unexecuted contract be drawn and presented to the latter Commission.

Petitioner's Exhibit F, furnished to the Petitioner by the Respondent, was received in evidence and shows the range of Gauge pressures during the period May 1 to 7, 1939, for various Illinois towns. The first two columns on

said exhibit represent the pressures to which the Illinois Natural Gas Company reduces the gas received from the Panhandle Eastern Pipe Line Company at its reducing stations, located in proximity to the connection between the lines of the two companies. The third and fourth columns [fol. 24-43] represent the pressure at which the gas is delivered to the utility consumer or the various distributing companies located on these lateral lines. The showing for said week would be fairly representative for their general operation.

The following portion of the record in Case No. 26563 before the Illinois Commerce Commission was read into the record by Mr. Stevens:

"Mr. Neuner: The purpose to be accomplished by the present proceeding is the separation of the property and the business of Panhandle Illinois Pipeline Company to the end that the property and the business, which is purely intrastate and of a local public utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operating at a public utility in this State and that the main line and compressing stations not used, useful or necessary in the conduct of a public utility business be transferred to Panhandle Eastern Pipe Line Company, a Delaware Corporation.

"Mr. Bay: Exhibit A, as a whole is a complete schedule of all of the properties now owned by Panhandle Illinois Pipeline Company and proposed to be transferred to Illinois Natural Gas Company which are useful in the conduct of the utility business in the State of Illinois.

"Question by Mr. Neuner: It is true, Mr. Bay, that Exhibit A attached to that contract is all of the property of Panhandle Illinois Pipeline Company exclusive of the main line and compressor station?

"Answer: That is true.

[fol. 24-44] Question: "I will ask you to state whether or not that schedule includes all of the Certificate of Convenience and Necessity heretofore granted to Panhandle Illinois or its predecessor in Illinois."

Answer: "It does."

Question: "So that under this contract the Illinois Natural will own all of the Certificates of Convenience and Necessity now owned by Panhandle Illinois?"

Answer: "That is true."

Question: "If and when the plan contemplated is approved by the Commission and the transfer of the property is effected, is it the intention that Illinois Natural file with the Commission rate schedules, rules and regulations and conditions of service for the rendition of natural gas service both directly and indirectly to customers in Illinois substantially identical with the rate schedules, rules and regulations and conditions of service of Panhandle Illinois now on file with the Commission and at present in effect?"

Answer: "That is the intention under this plan."

Question: "The points of delivery where the gas is to be delivered from Panhandle Eastern to Illinois Natural under this proposed contract is fixed at the points of connection of the lateral lines with the main line; is that correct?"

Answer: "That is right."

Question: "Is it the intention that the volumes delivered be also measured at those points of connection?"

Answer: "In instances, yes; in others, probably no, at this time. However, the general plan contemplates the use [fol. 24-45] of existing meters where they are located at the main pipeline and possibly additional meter installations where there is no such existing points of measurement as time goes on."

(Objection by Mr. Clark to statement of Mr. Neuner as being a conclusion of law and not in evidence overruled.)

FURTHER DIRECT EXAMINATION OF E. F. KELLY, WITNESS FOR PETITIONER, BY MR. STEVENS

The gas we receive from the Indiana Company varies from about 960 to 970 B.t.u. when it is being received from Kentucky up to about 1010 B.t.u. When it is received through the Universal Gas Company from the Panhandle Eastern. The B.t.u. content of the gas furnished by the Illinois Natural averages about 1010 to 1020.

The gas purchased from the Illinois Natural Gas Company averages about thirty-two cents per thousand cubic feet, whereas from the Universal Gas Company the price is a straight rate of thirty-seven and one-half cents, or an average difference of about five and one-half cents. If all the gas from the Universal Gas Company were purchased from the Illinois Natural Gas Company, it would be a saving to our company of about $11,600 per year, based on

1938 sales. If all the gas were purchased from the Illinois Natural, we would put into effect in the Mattoon group the rates now in effect at Quincy and a number of our other towns, which would result in a saving to the customer of about $12,000 a year. In addition to that saving the cus-
[fol. 24-46] tomers would also be getting gas with a higher B.t.u. We sell gas in that area by the therm, but it is assumed under the Commission's orders that all gas is 950 B.t.u. We adjust the gas on a basis of 960 B.t.u. for billing purposes. There would not be any improvement in the contents of the gas but the rate itself would be cheaper.

CROSS EXAMINATION OF MR. KELLY BY MR. CLARK

From the Illinois Natural Gas Company, we receive gas at Quincy, Canton, Lewistown, Havana, Pana, Tower Hill, Taylorville, Shelbyville and Hoopeston. We deliver to our domestic customers in those towns through the supply main running to the house at about six inch pressure or 3.47 ounces, which is the average pressure used by other utilities for that type of service. The street main pressure varies in different towns, we carry up to three or four pounds in smaller towns.

Memorandum filed July 18, 1939 on behalf of Petitioner by A. D. Stevens, its attorney.

Memorandum filed August 29, 1939 on behalf of Respondent by Glenn W. Clark, its attorney.

Reply Memorandum filed September 19, 1939 on behalf of Petitioner by A. D. Stevens, its attorney.

DECISION OF COMMISSION—November 30, 1939

Order entered by Illinois Commerce Commission on November 30, 1939 in Central Illinois Public Service Company v. Illinois Natural Gas Company, No. 27906, as follows:

"On May 22, 1939, the Central Illinois Public Service
[fol. 24-47] Company, an Illinois corporation, filed with the Commission a petition (in the nature of a complaint) against the Illinois Natural Gas Company, also an Illinois corporation, seeking an order from the Commission requiring the respondent to furnish complainant with wholesale natural gas service at or near the City of Mattoon, Coles County, Illinois.

"Pursuant to due notice as required by law and the rules and regulations of the Commission, hearings were held in the cause on June 6th and June 21st, 1939 at the Springfield, Illinois, offices of the Commission.

"It appears from the record that the complainant has for some years past been engaged in the business of supplying and distributing natural gas to the public at retail in the cities of Mattoon, Effingham, Paris and Charleston, and small intermediate communities, all in the State of Illinois; that Charleston with a population of about 8000, and Paris with a population of about 9000, are located respectively twelve and forty miles east of Mattoon which has a population of about 15000; and that Effingham with a population of about 5000, is located approximately thirty miles southwardly from Mattoon.

"It further appears that for many years prior to 1932, when complainant began serving said cities with natural gas, it served them with artificial gas from local plants, but in 1927, in order to obtain the economies of quantity manufacture in a centralized plant, it installed a four-inch transmission main from its Mattoon plant to Charleston, and the next year extended said main to Paris, and that two years later complainant installed a like four-inch main from its Mattoon plant to Effingham.

[fol. 24-48] "It further appears that since the substitution of natural for artificial gas service by the complainant, it has been receiving natural gas at a point near the City of Paris which it transmits through its four-inch main to Charleston, thence to Mattoon and thence to Effingham; that the complainant receives its supply of gas at Paris from the Indiana Consumers Company, a company over which this Commission has no control, and under such circumstances as to leave it dependent upon delivery only from hour to hour.

"It further appears that the complainant's main from Mattoon through Charleston to Paris was designed for operation at a pressure of only 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by complainant at Charleston, Mattoon and Effingham; that because the requirements of the last three named cities have outgrown the lines capacity, complainant is confronted with the necessity of either installing an additional main at a cost of approximately a quarter of a million dollars, or of

obtaining natural gas at Mattoon from respondent; that procurement of gas from respondent would not only insure continuity of supply, but would avoid the capital and operating expenses incident to the construction of an additional main and enable complainant to serve its customers in all of the aforesaid cities and the communities intermediate thereof with a gas of a higher b.t.u. content at lower rates.

"It further appears that the respondent, Illinois Natural Gas Company (hereinafter sometimes referred to as "Illinois Natural") is a subsidiary of the Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle Eastern") a Delaware corporation; that prior [fol. 24-49] to June 15, 1938, all of the physical property in Illinois now owned by respondent, and all the physical property now owned by Panhandle Eastern (excepting in both cases minor subsequent additions) was owned and operated by the Panhandle Illinois Pipe Line Company (hereinafter sometimes referred to as "Panhandle Illinois"), also an Illinois corporation and a subsidiary of Panhandle Eastern; that the property of Panhandle Illinois then embraced (1) a large high pressure gas main extending across the State of Illinois, from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point near the Indiana-Illinois state line in Edgar County, Illinois, with incidental pressure-boosting equipment, and (2) a number of lateral mains leading from Illinois points on this high pressure main to the distribution systems of utilities operating in various Illinois cities, with the equipment incident to such laterals; that Panhandle Illinois carried on both the transmission of gas through its large high pressure main into and across the State of Illinois, and the transmission of gas through its laterals to local utilities as an Illinois public utility, under certificates of public convenience and necessity and in accordance with rates, rules, regulations and conditions of service, issued and approved by this Commission.

"It further appears that in February, 1938, the respondent company, Illinois Natural, and Panhandle Illinois filed with this Commission, as Docket No. 26553, a joint petition wherein they sought an order approving and authorizing the execution and carrying out of a three party contract providing for the transfer by Panhandle Illinois of its large high pressure main extending across the state and

its incidental boosting equipment, to Panhandle Eastern; [fol. 24-50] and the transfer, assignment and conveyance to respondent of all Panhandle Illinois' remaining property and assets, including the laterals and their incidental equipment and the business of supplying Illinois utilities; that under the terms of such contract, respondent was to take over so much of Panhandle Illinois' operations and business as comprised the rendering of gas service as a public utility within the State of Illinois, and to own and thenceforth operate all the property to be acquired by it, in the carrying on of a general gas public utility business within the State under the jurisdiction of this Commission in accordance with rates, rules, regulations and conditions of service approved by the Commission.

"It further appears that the purpose of the proceeding was represented to the Commission by both respondent and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

"It further appears that in such proceeding the Commission was also asked to approve a contract between respondent and Panhandle Eastern for the furnishing by Panhandle Eastern to respondent of all gas required by respondent for resale by respondent to the several distributing companies then, or thereafter to be, served by it, delivery of the gas to respondent to be at the respective connections of respondent's laterals with the large high [fol. 24-51] pressure main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas would be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to respondent.

"It further appears that by order entered June 15, 1938, the Commission approved the carrying out of the aforesaid proposals, and issued to respondent the requisite certificates of convenience and necessity, and that thereafter

the proposed transactions were consummated and respondent thereupon began, and has since carried on, under rates, rules, regulations and conditions of service approved by this Commission, a public utility business in the furnishing of natural gas in Illinois to Illinois distributing gas public utilities for distribution by them in this State.

"It further appears that all gas handled or in any way dealt with by respondent is obtained by it from Panhandle Eastern under the before mentioned contract, and its terms expressly limit the gas to be delivered by Panhandle Eastern and received by respondent to that required in territory for which respondent has been, or shall be, granted certificates of convenience and necessity by this Commission; that such gas is delivered by Panhandle Eastern and received by respondent at the points of connection between Panhandle Eastern's main and respondent's laterals; that up to these points of delivery ownership, control, possession and responsibility are in Panhandle Eastern; that upon delivery at these points ownership and "exclusive" control, possession and responsibility pass to respondent; that the contract provides in detail for accurate measurement at points of delivery and requires [fol. 24-52] payment by respondent to Panhandle Eastern according to such measurement; that all physical property in any way devoted to the treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is owned and operated by respondent and located in Illinois; that all physical treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is done by respondent and occurs entirely within the state of Illinois; that no gas received by respondent moves, or is intended to move, outside of the State of Illinois and all is ultimately consumed within this State; that immediately upon its receipt of the gas from Panhandle Eastern, respondent reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers; that respondent further reduces the pressure at the termination of its laterals to meet its customer's needs and the gas is all handled by respondent in accordance with

rates, rules, regulations and conditions of service on file with and approved by this Commission.

"It further appears, and the respondent agrees, that the rendition of the service as requested by complainant would be profitable to respondent, and both in negotiations had with complainant prior to the beginning of this proceeding, and before the Commission during the progress of the hearings, the respondent stated its willingness to render the service provided it receives the necessary lawful authority to do so.

"Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the respondent does challenge the complain- [fol. 24-53] ant's right to demand the service and the right of the Commission to compel its rendition, on the sole ground that respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce, and for that reason are under the jurisdiction and control of the Federal Power Commission and are therefore matters over which this Commission has no authority.

"It must be conceded that respondent's procurement of the gas at the respective points of delivery are interstate matters, but respondent's position that the interstate character which prevails to those points must be further extended and made to cover its later dealings with the gas subsequent to its receipt, is untenable in the light of the foregoing undisputed facts. It is true that the movement of the gas through respondent's laterals is caused by what remains, after respondent's reductions, of pressure supplied in effecting its prior interstate transmission, but such continuity of movement is, as is universally held by judicial authority, in no sense controlling, and may exist with respect to intrastate commerce as well as interstate, depending upon the particular facts. In this case the same pressure continues to move the gas to the burners of the patrons of respondent's customers, a movement intrastate beyond any doubt.

"Putting aside all question as to the extent of authority given the Federal Power Commission by the Natural Gas Act, it would seem that the record in this case so manifestly discloses respondent's operations subsequent to its receipt of the gas to be so completely local to Illinois, and so

wholly intrastate in character, as to preclude regulation or control by any Federal agency.

[fol. 24-54] "What constitutes interstate commerce is not a matter for determination by legal formula, but is to be determined from the facts individual to each case as it arises. "Interstate commerce is a practical conception and what falls within it must be determined on consideration of established facts and known commercial methods." The fact that a commodity is brought across state lines of itself raises no controlling implication that subsequent dealings with respect to it remain interstate matters. The highest judicial authorities are unanimous in the holding that the interstate character created by transportation across state lines may cease upon arrival at destination within a state, and be thereafter succeeded by a character wholly intrastate.

"The decisive question in this case is whether respondent's dealings and transactions with respect to the gas subsequent to its receipt at points of delivery disclose a termination of those dealings and transactions by which the gas is brought into Illinois and delivered to respondent by Panhandle Eastern, and the beginning and thenceforth carrying on of other new and different dealings and transactions with new and different parties which concern matters wholly confined to Illinois in which the interest local to this State is permanent.

"The evidence clearly indicates that respondent is engaged in two characters of business with respect to its gas. One is made up of its dealings and transactions with Panhandle Eastern in obtaining from that company the gas and its transmission to the various points of delivery in Illinois, and the other of its dealings and transactions in disposing of the gas to its Illinois customers after having received it. No difference is conceivable between respond-
[fol. 24-55] ent's present handling of the gas and its present dealings and transactions concerning it subsequent to its receipt, and those which would prevail were respondent receiving the gas from its own wells located at the respective points of receipt within this State. The purposes and business of respondent, disclosed by its actions and actual operations as well as by the avowed purpose and intention formerly declared by it to this Commission, clearly establish the closing of its interstate relations upon its receipt

of the gas, and the beginning of that point of dealings affecting only and relating solely to Illinois.

"The Commission having considered the evidence and briefs of the respective parties, and being fully advised in the premises, is of the opinion and finds:

(1) that it has jurisdiction of the subject matter of this proceeding and the parties herein;

(2) that the Central Illinois Public Service Company is an Illinois corporation, and is engaged in the business of furnishing natural gas service for public use in the cities of Mattoon, Paris, Charleston and Effingham and small communities intermediate thereof, and in so doing is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(3) that the aforesaid Central Illinois Public Service Company now serves the above mentioned cities and intermediate communities with natural gas procured near the City of Paris, Illinois, thence transmits it to the cities of Charleston, Mattoon and Effingham by means of a four-inch [fol. 24-56] transmission main of which the portion between Paris and Mattoon, a distance of approximately forty miles, has an age of eleven or more years; that said main was designed for operation at a pressure of 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by the Central Illinois Public Service Company at Charleston, Mattoon and Effingham and intermediate communities;

(4) that the natural gas now served by the Central Illinois Public Service Company in the cities of Paris, Charleston, Mattoon and Effingham and intermediate communities is procured near Paris from the Indiana Consumers Company under circumstances leaving the Central Illinois Public Service Company dependent upon delivery from hour to hour and from a company over which this Commission has no jurisdiction or control, and that to continue to supply Charleston, Mattoon and Effingham from such source would require the installation of an additional main from Paris to Mattoon at a cost of approximately a quarter of a million dollars;

(5) That the procurement of natural gas from Illinois Natural Gas Company at Mattoon for the aforesaid cities

and intermediate communities would not only make unnecessary the installation of an additional main between Mattoon and Paris, but would provide Central Illinois Public Service Company with natural gas of a higher b.t.u. than that now received by it and would enable it to serve [fol. 24-57] its customers in said cities and communities with natural gas service at lower rates;

(6) that the natural gas service sought by the Central Illinois Public Service Company can be rendered by the Illinois Natural Gas Company with a reasonable profit to the latter company;

(7) that the Illinois Natural Gas Company, is an Illinois corporation engaged in the business of furnishing natural gas at wholesale to Illinois natural gas distributing companies in the general territory extending across the central portion of this State from the Mississippi River near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, pursuant to certificates of convenience and necessity granted by this Commission and in accordance with rates, rules, regulations and conditions of service filed with and approved by this Commission, and is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(8) that the Illinois Natural Gas Company procured the natural gas so dealt with by it from a large gas transmission main owned and operated by the Panhandle Eastern Pipe Line Company, a Delaware corporation, extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, through which said last named company transmits natural gas across the Illinois-Missouri state line into the State of Illinois and there delivers it to the Illinois Natural Gas [fol. 24-58] Company at various points of connection between its large transmission line and lateral mains, owned by the Illinois Natural Gas Company, and used by the latter company exclusively in the transportation of such natural gas in Illinois to customers of such latter company, at which aforementioned points of connection ownership and exclusive control, possession and responsibility vest in the said Illinois Natural Gas Company;

(9) that immediately upon its receipt of natural gas from the Panhandle Eastern Pipe Line Company, the Illinois Natural Gas Company reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers, and that respondent further reduces the pressure at the termination of its laterals to meet the requirements of its customers with respect thereto;

(10) that each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from the Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character;

(11) that the public convenience and necessity requires that the prayer of the petition of the Central Illinois Public Service Company should be granted and that, the Illinois Natural Gas Company should be ordered, directed [fol. 24-59] and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity should be issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company should report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections;

(12) that upon completion of said installations and connections the Illinois Natural Gas Company should begin, and thereafter until further order of this Commission continue, to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in

quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural [fol. 24-60] Gas Company now has, or may hereafter have, on file with and approved by this Commission; and

(13) that the Commission should retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet.

"It Is Therefore Ordered by the Commission that the prayer of the petition of the Central Illinois Public Service Company be, and it is hereby, granted, and that the Illinois Natural Gas Company be, and it is hereby, ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity be, and it is hereby ordered issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company shall report, in writing, at thirty day intervals, to the Secretary of this Commission at Springfield, Illinois, the progress being made with the construction of such installations and connections.

"It Is Further Ordered that upon completion of said installations and connections the Illinois Natural Gas Com- [fol. 24-61] pany shall begin and thereafter until further order of this Commission continue to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may

hereafter have, on file with and approved by this Commission.

"It Is Further Ordered that the Commission retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet."

RESPONDENT'S PETITION FOR REHEARING—Filed Dec. 28, 1939

Petition of Respondent for Rehearing, filed December 28, 1939, states in part as follows:

"2. That this Commission was without jurisdiction to hear and determine the matter in controversy or to enter the order dated November 30, 1939 in said proceeding because respondent's operations and business are wholly interstate in character and as to all matters in controversy in the above entitled proceeding are subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act, being 52 Stat. 821-33.

"3. That the Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order herein entered and said order in invalid in that said Act and the order entered thereunder would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3 of the Constitution of the United States, being the commerce clause thereof.

[fol. 24-62] "4. That the Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order herein entered and said order is invalid in that said Act and order would take the property of respondent without due process of law by requiring it to construct a pipe line into a territory already being served by an interstate natural gas company, which respondent cannot lawfully do without obtaining a certificate of convenience and necessity from the Federal Power Commission under the provisions of said Natural Gas Act and which, if done without such authority, would cause respondent to incur liability to heavy penalties under said Natural Gas Act and to a probable loss of its investment in the pipe line ordered to be constructed.

"5. That the order is unreasonable and unlawful in that while it directs respondent to make connections with peti-

tioner's pipe line and to supply natural gas to meet petitioner's needs in certain Illinois communities, it does not direct petitioner to purchase from respondent, or if it does so direct by implication, it does not direct that petitioner purchase from respondent the entire requirements of said communities. Further, if by implication said order does direct petitioner to purchase exclusively from respondent the entire natural gas requirements of said communities, it fails to make any provision for such continuity of purchase by petitioner as to protect respondent by reasonably insuring the amortization of an investment of approximately $120,000.00 which respondent would be required to make in order to comply with said order.

"6. That the Commission's findings of fact with respect to reduction of pressures by respondent are contrary to the evidence.

[fol. 24-63] "7. That the conclusions of law of the Commission to the effect that respondent's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence."

Proof of service of Petition of Respondent for rehearing.

ORDER DENYING PETITION FOR REHEARING—Jan. 3, 1940

Petition for rehearing denied January 3, 1940.

NOTICE OF APPEAL TO CIRCUIT COURT

Notice of appeal filed by respondent from order entered November 30, 1939 to the Circuit Court of Coles County, Illinois, on January 24, 1940.

Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938 and applying to the territory served directly by said Company in Illinois.

PETITIONER'S EXHIBIT "A"

Order of the Illinois Commerce Commission, entered June 18, 1936, in the matter of the application by the Central Illinois Public Service Company for approval of contract entered into by it with the Indiana Consumers Gas & By-Products Company, April 30, 1932, for natural

gas to be furnished at Mattoon, Charleston, Paris and Effingham and adjacent municipalities, being Petitioner's Exhibit A. Said order provided that the proposed contract with the Indiana Consumers Gas & By-Products Company be disapproved and that the Petitioner submit to the Commission a plan for obtaining a supply of natural gas sufficient to meet its reasonable future requirements in the above named cities and communities at an early date.

PETITIONER'S EXHIBIT "B"

Order of the Illinois Commerce Commission, entered June 15, 1938, in the matter of the transfer, assignment and conveyance by the Panhandle Illinois Pipe Line Company of all [fol. 24-64] of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company (No. 26563), being Petitioner's Exhibit B. Said order provides in part as follows:

"• • • that Panhandle Illinois Pipe Line Company now owns and operates a system of gas pipe lines, compressor stations, meters and regulator stations and appurtances and facilities used in connection with the operation thereof within the State of Illinois; that said petitioner is now engaged in the business of purchasing, transporting, selling and furnishing natural gas to public utilities within the State of Illinois and to other consumers of natural gas within said state, and is also engaged in the business of transporting natural gas across the State of Illinois, • • •; that all of the gas transported, sold and delivered by said petitioner • • • is purchased and received by said petitioner from Panhandle Eastern Pipe Line Company, its parent corporation.

• • • • • • •

"It further appears • • • a contract was made and entered into between petitioner, Panhandle Illinois Pipe Line Company, petitioner Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company • • • under the terms of which petitioner, Panhandle Illinois Pipe Line Company contracted and agreed to transfer, assign and convey to Illinois Natural Gas Company its lateral pipe lines, meter and regulator stations, the rights of way, grants, easements, licenses and permits under which said lateral lines and properties were constructed, • • •;

that a full and complete description of the property and assets which said Panhandle Illinois Pipe Line Company has so agreed to transfer, assign and convey to Illinois Natural Gas Company is contained in * Exhibit "A"*; [fol. 24-65] that under the terms of said contract Illinois Natural Gas Company * contracted and agreed that in consideration of the transfer, assignment and conveyance of said property and assets to it by said Panhandle Illinois Pipe Line Company to issue to said Panhandle Illinois Pipe Line Company all of Illinois Natural Gas Company's authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract it is further provided that simultaneously with the transfer, assignment and conveyance of the aforesaid property to Illinois Natural Gas Company, petitioner, Panhandle Illinois Pipe Line Company will transfer, assign and convey in liquidation to Panhandle Eastern Pipe Line Company, a Delaware corporation, all of the remainder of its properties and assets of every kind and description, of whatsoever character and wheresoever situated, which said properties so to be transferred to Panhandle Eastern Pipe Line Company are specifically described in * Exhibit "B" * * *."

"It further appears that upon consummation of the transfer, assignment and conveyance of all of the property and assets of Panhandle Illinois Pipe Line Company under the terms and provisions of said contract, Illinois Natural Gas Company proposes to enter into a contract with its then parent corporation, Panhandle Eastern Pipe Line Company, for a supply of natural gas of adequate quantities and proper heating value and purity to enable it to properly carry out its duties and obligations as a gas public utility within the State of Illinois; that under the terms of said proposed contract delivery of natural gas to said Illinois Natural Gas Company will be made at the points of connection of any present or future spur or lateral lines or farm taps of Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company.

[fol. 24-66] "The Commission * * * is of the opinion and finds:

"(6) that on the 18th day of February, 1938 a contract was made and entered into between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and

Panhandle Eastern Pipe Line Company * * * under the terms of which Panhandle Illinois Pipe Line Company has agreed to transfer, assign and convey to Illinois Natural Gas Company, an Illinois corporation, the properties and assets owned by it, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, a description of which property and assets is contained in the schedule hereinabove referred to, marked Exhibit 'A' * * *; that under said contract Illinois Natural Gas Company agreed to issue to Panhandle Illinois Pipe Line Company all of its authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract Panhandle Illinois Pipe Line Company further agreed that simultaneously with the transfer, assignment and conveyance of said properties described in Exhibit 'A' attached hereto, to Illinois Natural Gas Company, it would transfer, assign and convey to Panhandle Eastern Pipe Line Company, a Delaware corporation, all the remainder of its properties and assets, consisting of that part of the properties and assets of Panhandle Illinois Pipe Line Company not used exclusively in the furnishing of gas to consumers and other public utilities in the State of Illinois; * * *.

"It Is Further Ordered that petitioner, Illinois Natural Gas Company, is hereby authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the State of Illinois, * * *."

[fol. 24-67] PETITIONER'S EXHIBIT "C"

Letter from G. J. Neuner, Vice President of Illinois Natural Gas Company, to Central Illinois Public Service Company, Springfield, Illinois, attention of E. F. Kelly, Vice President, dated May 4, 1939, being Petitioner's Exhibit C, as follows:

"Reference is made to your request that we construct a pipe line from a point on the main line of Panhandle Eastern Pipe Line Company near Tuscola, Illinois, to a point at or near the City of Mattoon, Illinois, and make available to you at the latter point a supply of natural gas for all of your gas requirements for resale to your customers, present and prospective, in Mattoon, Effingham, Charleston, and

other communities and customers (except the City of Paris) connected to your existing pipe line and distribution systems in said cities. We understand that you are now being supplied with natural gas for resale in said cities and communities by another pipe line company and that such deliveries are made on a day to day basis, but that you desire to discontinue purchasing gas from said source of supply because you contend, among other things, that said service is inadequate for your purposes.

"We have made an analysis of the facts available to us and have determined that the present and potential future markets in the above-named cities and communities probably are sufficient to justify the capital expenditures necessary in the construction of the pipe line in question. We desire to advise you that subject to the approval of our Board of Directors we are willing to construct the necessary pipe line to connect with your pipe line and distribution system at Mattoon and to furnish natural gas to you [fol. 24-68] for all of your gas requirements for resale in the above-mentioned cities and communities if the same can be accomplished legally, such sale and delivery to be made at our regular filed rates and subject to our filed rules, regulations, and conditions of service, and to continue for a period of not less than ten years.

"As you know, during the year 1938, the Congress of the United States enacted the 'Natural Gas Act' under which natural gas companies, as defined in the act, were made subject to regulation by the Federal Power Commission. Said Act provides in part as follows:

" 'Section 7 (c). No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof.'

Recently, we received a letter from the Federal Power Commission notifying us that the Illinois Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act, and is required to comply with the provisions of said Act.

[fol. 24-69] "In view of the fact that another pipe line company is now serving gas in this territory and of the position taken by the Federal Power Commission, it is our opinion that before we can make any commitment to build the line in question and undertake to supply natural gas to you for resale in these several cities, it will be necessary that a certificate of convenience and necessity be procured from the Federal Power Commission authorizing us to do so.

"As you know, the Illinois Commerce Commission has been exercising jurisdiction over the operations of this company for several years. Whether the Illinois Commerce Commission or the Federal Power Commission now has jurisdiction is a question which is of vital importance in this and in other matters affecting our operations. We think this question should and reasonably can be determined in this case. Since most of the facts to support an order granting a certificate of public convenience and necessity in this case are within your knowledge and not in our possession, we think your cooperation before the Federal Commission is necessary. If you will indicate your willingness to cooperate and advise us that in the event a certificate is granted by the Federal Power Commission you will contract to purchase natural gas from us for resale in said several cities and communities on the basis above mentioned, we will undertake to prepare and file the necessary application before the Federal Power Commission for determination of (a) the question of whether the Federal Power Commission has jurisdiction of Illinois Natural Gas Company, and if it has such jurisdiction, then (b) the question of granting [fol. 24-70] to Illinois Natural Gas Company a certificate of convenience and necessity to construct the necessary facilities and serve natural gas to you for resale in the aforesaid cities and communities."

PETITIONER'S EXHIBIT "D"

Letter from the Central Illinois Public Service Company to the Illinois Natural Gas Company, dated May 8, 1939, being Petitioner's Exhibit D, as follows:

"Acknowledgment is made of receipt of your letter of May 4 relative to our request that you furnish us at Mattoon, for a period of not less than ten years and subject in all respects to your regularly filed applicable rates, rules, regulations and conditions, the natural gas required by us for distribution and resale in the cities of Mattoon, Charleston, Paris and Effingham and intermediate communities adjacent to our pipe lines connecting those cities.

"We are pleased to learn from your letter that an analysis of the present and potential markets in the above named cities and communities has led you to abandon the opposition to the furnishing of this service advanced by your predecessor, the Panhandle Illinois Pipe Line Company, and that you are now willing to furnish such service 'if the same can be accomplished legally.'

"The question whether you can legally commit your company to render this service without first receiving authority so to do from the Federal Power Commission is one which we, unfamiliar as we are with whatever relationships may exist between your company and others which might bring you within the jurisdiction of that body, cannot of course [fol. 24-71] undertake to pass upon; but it is at least premature inasmuch as we have at no time asked of you any commitment of any kind unless approval thereto shall have first been granted by every governmental agency, State or Federal, having jurisdiction in the premises. You will recall that at all times and repeatedly during our recent conferences we offered to have any contract or arrangement for the proposed service expressly conditioned upon its approval by such governmental authorities as might be found necessary. You will also recall that at the last conference the suggestion was made by us that only an unsigned draft of the terms of an agreement satisfactory to both parties be prepared and presented to the Illinois Commerce Commission for its approval, but subject in all respects in its taking effect to additional approval by other authority.

"Inasmuch as we are directly under the control of the Illinois Commerce Commission, and you appear at most to be uncertain as to that body's jurisdiction over the proposed service, it seems to us beyond question that the orderly and time-saving procedure would be to first apply for the approval of that body, leaving you, in the event such approval is obtained, free to apply for any further approval from any other body or agency having authority in the

premises, unhampered in any way by any commitment if such further approval can not be obtained. You will recognize at once that should the Illinois Commission fail to give approval, all further effort for approval from other sources would be eliminated."

[fol. 24-72] PETITIONER'S EXHIBIT "E"

Letter from Illinois Natural Gas Company to Central Illinois Public Service Company, dated May 11, 1939, being Petitioner's Exhibit E, in part as follows:

"• • • For the reasons mentioned in my letter of May 4th, we do not consider it advisable to follow a procedure which will involve the submission of a form of agreement in this matter. However, it seems to us that if you wish to proceed before the Illinois Commerce Commission in advance of the filing of any application before the Federal Power Commission by our company, our letter of May 4th should be sufficient for your purpose."

PETITIONER'S EXHIBIT "F"

Range of Gauge Pressures of the Illinois Natural Gas Company during the period May 1 to 7, 1939, being Petitioner's Exhibit F, which shows the minimum gauge pressures carried in the various lateral lines of Respondent, varying from 38 pounds to 173 pounds, and also shows minimum gauge pressures at which natural gas is delivered by Respondent to the various distributing companies, varying from 15 pounds to 91 pounds.

RESPONDENT'S EXHIBIT No. 1

Gas Contract between the Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, dated as of June 30, 1938, being Respondent's Exhibit 1.

RESPONDENT'S EXHIBIT No. 2

Map of the Main Transmission System of the Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, being Respondent's Exhibit 2.

(Here follows 1 photolithograph, side folio 73)

RESPONDENT'S EXHIBIT NO.2

MAIN TRANSMISSION SYSTEM
OF
PANHANDLE EASTERN PIPE LINE COMPANY
AND
ILLINOIS NATURAL GAS COMPANY
(A wholly owned subsidiary)

45 0 25 50 75 100 125 150 175 200
Scale of Miles

SOUTH DAKOTA
NEBRASKA
COLORADO
KANSAS
IOWA
ILLINOIS
MISSOURI
L. MICHIGAN

South Platte River
Platte River
Republican River
Solomon River
Smoky Hill River
Kansas (Kaw) River
Missouri River
Des Moines River
Illinois River
Rock River
Arkansas River
North Canadian River

CHICAGO
PEORIA
CANTON
LINCOLN
HOOPESTON
DANVILLE
CHAMPAIGN
URBANA
QUINCY
SPRINGFIELD
JACKSONVILLE
DECATUR
PALMYRA
HANNIBAL
New London
MOBERLY
LIBERTY
KANSAS CITY
TOPEKA
Houstonia
New Franklin
FAYETTE
Centralia
CENTRALIA
FULTON
JEFFERSON CITY
LOUISBURG (C)
OLPE (C)
HAVENA (C)
HUTCHINSON
WICHITA
GREENSBURG (C)
HUGOTON GAS FIELD
ELKHART
BERN (C)
AMARILLO
Beaver
Burns
Preston
Luka
Pleasant Hill (C)
Glenarm (C)
Tuscola (C)
Taylorville
Wellsville
Greenville
Edwardsville
St. Louis
E. St. Louis
Columbia
Tipton
Centerview
Warrensville

47.24 Mi. 24"
71.1 Mi. 22"
70.6 Mi. 22"
15.24 Mi. 22"
14.50 Mi. 22"
44.60 Mi. 20"

Note: Lateral lines to Chrisman, Tuscola, Roadhouse, Whitehall and Pittsfield owned by distribution Companies

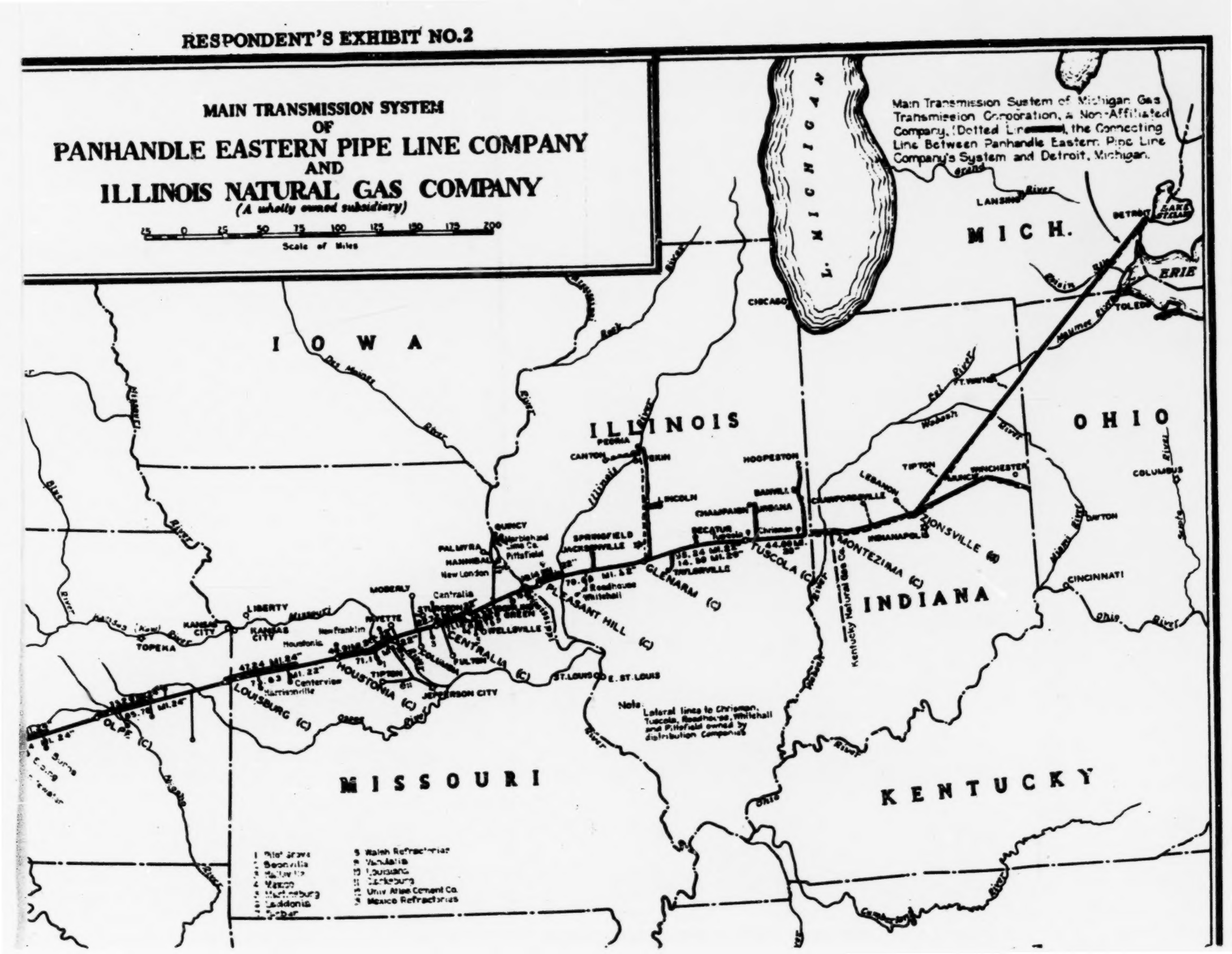
1 Pilot Knob
2 Steelville
3 Valley Ply
4 Vulcan
5 Martinsburg
6 Laddonia
7 Zeiber
8 Walsh Refractories
9 Vandalia
10 Louisiana
11 Clarksburg
12 Univ Atlas Cement Co.
13 Mexico Refractories

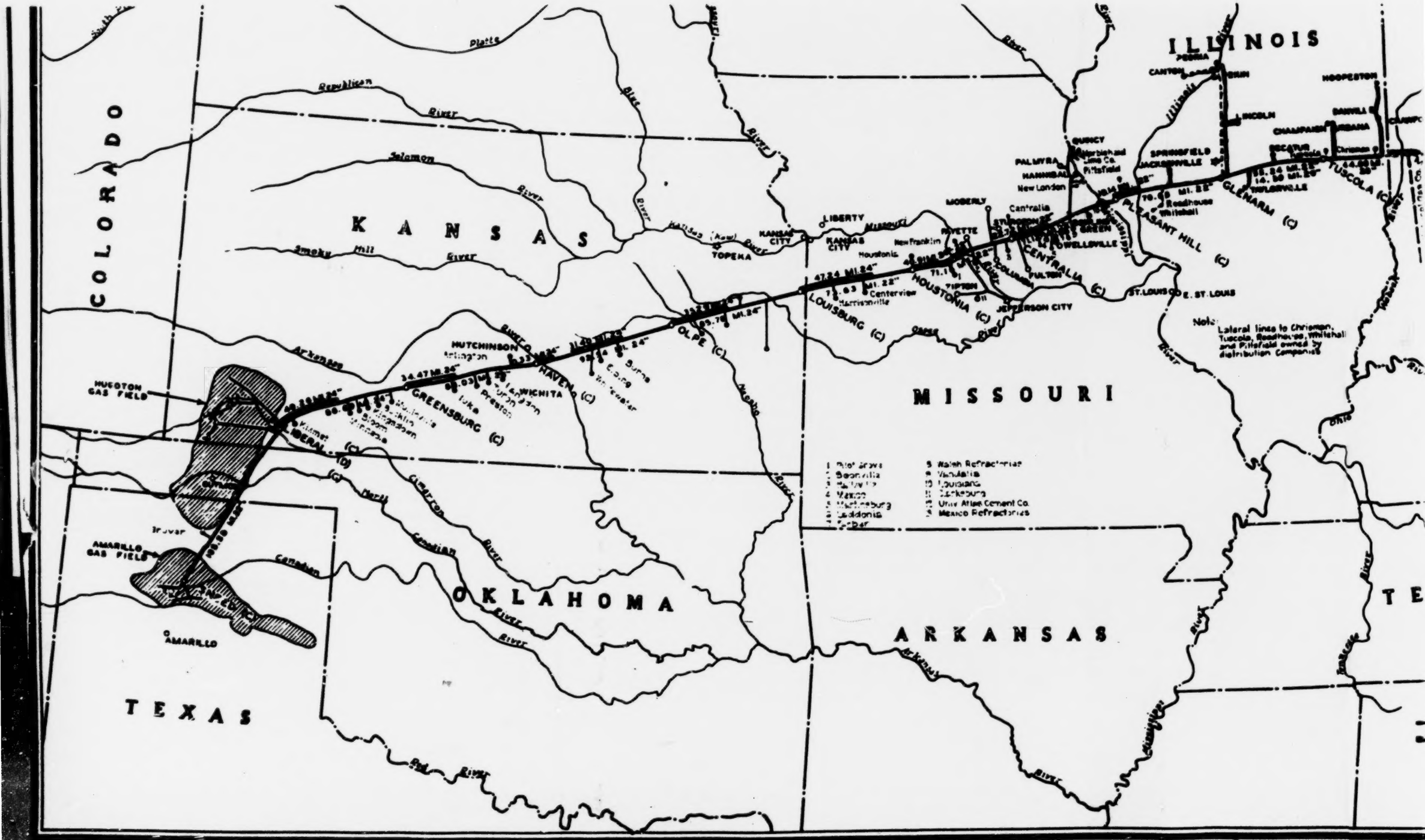
RESPONDENT'S EXHIBIT NO.2

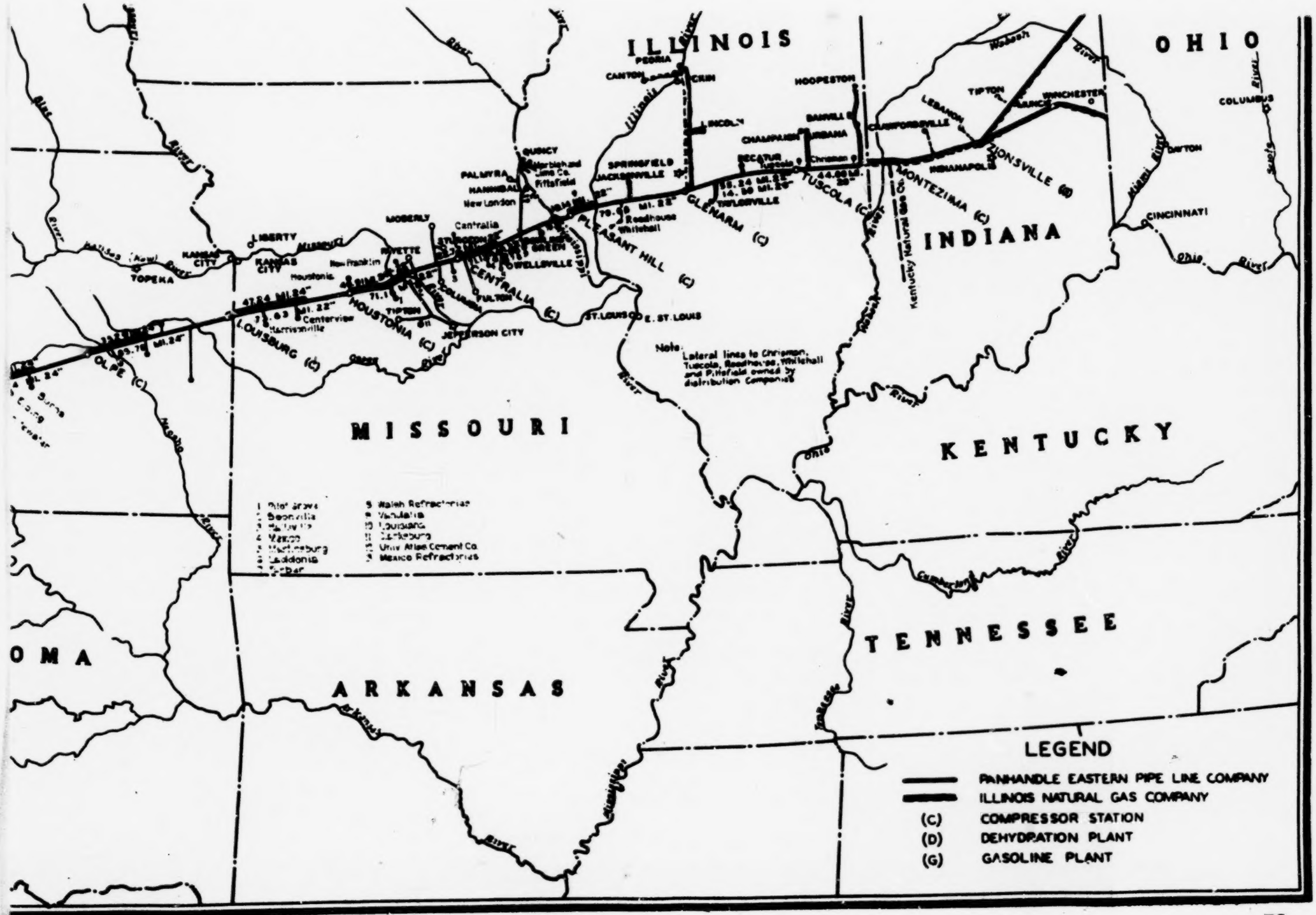
MAIN TRANSMISSION SYSTEM OF PANHANDLE EASTERN PIPE LINE COMPANY AND ILLINOIS NATURAL GAS COMPANY

(A wholly owned subsidiary)

Scale of Miles




COLORADO
KANSAS
OKLAHOMA
TEXAS
MISSOURI
ARKANSAS
ILLINOIS
Republican River
Solomon River
Smoky Hill River
Arkansas River
Platte River
Missouri River
Canadian River
Red River
Ohio River
Mississippi River
Cumberland River
Tennessee River
HUGOTON GAS FIELD
AMARILLO GAS FIELD
AMARILLO
HUTCHINSON
WICHITA
GREENSBURG (C)
LIBERAL (C)
HAVEN (C)
OLPE (C)
TOPEKA
KANSAS CITY
LIBERTY
LOUISBURG (C)
HOUSTONIA (C)
JEFFERSON CITY
CENTRALIA (C)
PLEASANT HILL (C)
GLENARM (C)
TUSCOLA (C)
ST. LOUIS
E. ST. LOUIS
QUINCY
PALMYRA
HANNIBAL
SPRINGFIELD
JACKSONVILLE
MOBERLY
Centralia
Houstonia
Centerview
Harrisonville
New Franklin
Fayette
Fulton
Tipton
Columbia
Wellsville
Pittsfield
New London
Readhouse
Whitehall
Louisburg
Mexico Refractories
Note: Lateral lines to Chrisman, Tuscola, Readhouse, Whitehall and Pittsfield owned by distribution companies


ILLINOIS
OHIO
INDIANA
MISSOURI
KENTUCKY
TENNESSEE
ARKANSAS
OMA
PEORIA
CANTON
CRIN
HOOPESTON
TIPTON
WINCHESTER
LEBANON
CLAMPORDSVILLE
COLUMBUS
DAYTON
CINCINNATI
QUINCY
PALMYRA
HANNIBAL
New London
SPRINGFIELD
JACKSONVILLE
LINCOLN
CHAMPAIGN
URBANA
DANVILLE
DECATUR
Lincoln
Chrisman
INDIANAPOLIS
ZIONSVILLE
MONTEZUMA (C)
TUSCOLA (C)
GLENARM (C)
Roadhouse
Whitehall
PLEASANT HILL (C)
MOBERLY
Centralia
LIBERTY
KANSAS CITY
TOPEKA
RAYETTE
New Franklin
Houstonia
CENTRALIA (C)
WELLSVILLE
FULTON
HOUSTONIA (C)
Centerview
Harrisonville
LOUISBURG (C)
JEFFERSON CITY
ST. LOUIS
E. ST. LOUIS
OLPE (C)
Kentucky Natural Gas Co.
Note: Lateral lines to Chrisman, Tuscola, Roadhouse, Whitehall and Pittsfield owned by distribution Companies
Walsh Refractories
Vandalia
Louisiana
Clarksburg
Univ Atlas Cement Co.
Mexico Refractories
LEGEND
PANHANDLE EASTERN PIPE LINE COMPANY
ILLINOIS NATURAL GAS COMPANY
(C) COMPRESSOR STATION
(D) DEHYDRATION PLANT
(G) GASOLINE PLANT

[fol. 24-74] RESPONDENT'S EXHIBIT No. 3

Order No. 53 of the Federal Power Commission, dated July 5, 1938, designating the time for filing of schedules of rates and charges under Section 4(c) of the Natural Gas Act, being Respondent's Exhibit 3.

RESPONDENT'S EXHIBIT No. 4

Letter from Leon M. Fuquay, Secretary of the Federal Power Commission, to the Illinois Natural Gas Company, dated April 18, 1939, which is as follows:

"Further reply is made to your letter of March 14, 1939 regarding the jurisdiction of this Commission over the Illinois Natural Gas Company, and the necessity for the filing of the rate schedules of that company with the Federal Power Commission.

"A report filed by the Illinois Natural Gas *Gas* Company pursuant to Order No. 51 states that all natural gas transported and sold by the Illinois Natural Gas Company is purchased from Panhandle Eastern Pipe Line Company, and that delivery is made to your company at several points in the State of Illinois from the main transmission line of the Panhandle Eastern Pipe Line Company.

"Information on file with the Commission indicates that the gas purchased from the Panhandle Eastern Pipe Line Company in Illinois is transported in interstate commerce by that company from producing fields in Texas and Oklahoma. It follows, therefore, that the Illinois Natural Gas Company is engaged in the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption. [fol. 24-75] "The Illinois Natural Gas Company is, therefore a natural gas company within the meaning of the Natural Gas Act and is required to comply with the provisions of said Act, including the filing of rate schedules."

Order of Circuit Court of Coles County entered February 21, 1940 in the cause of Central Illinois Public Service Company v. Illinois Natural Gas Company, No. 2179, being an appeal from the Illinois Commerce Commission, suspending the order of said Commission dated November 30, 1939.

ORDER OF CIRCUIT COURT SUBMITTING CAUSE

The following order was entered on the record in said cause No. 2179 in the Circuit Court of Coles County on July 22, 1940:

"By agreement of both parties, cause submitted to Victor Hemphill, one of the judges of the 7th Judicial Circuit of the State of Illinois. Cause submitted on record and oral statement and taken under advisement with privilege to parties to present additional argument either oral or written if desired by either party or by the Court. The above order entered on this docket by Judge Ben F. Anderson, as per request of Judge Hemphill.

ORDER OF CIRCUIT COURT APPROVING ORDER OF COMMISSION

The following order was entered on the record in said cause in the Circuit Court of Coles County on August 2, 1940:

"This day comes the parties in the above cause and the Court after due deliberation approves the order of the Illinois Commerce Commission entered November 30, 1939."

Praecipe for record filed September 6, 1940.

[fols. 24-76-25] NOTICE OF APPEAL TO SUPREME COURT OF ILLINOIS

Notice of Appeal to the Supreme Court of the State of Illinois from the Circuit Court of Coles County, filed September 6, 1940.

Glenn W. Clark, Esq., 10[illegible] West Eleventh St., Kansas City, Missouri. Brown, Hay and Stephens, 714 First Natl. Bank Bldg., Springfield, Illinois, *Attorneys for Appellant.*

[fol. 26] IN SUPREME COURT OF ILLINOIS

STATEMENT OF ERRORS RELIED UPON FOR REVERSAL—Filed November 9, 1940

1. The Illinois Commerce Commission was without jurisdiction to hear and determine the matter in controversy to enter its order dated November 30, 1939 in the proceeding

before it, because Appellant's operation and business are wholly interstate in character and as to matters in controversy in the proceeding before the Illinois Commerce Commission, the Appellant and the subject matter are under the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act 52 Stat. 820-33 (15 U. S. C. A. 717-717W).

2. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of November 30, 1939, entered by the Illinois Commerce Commission, in that the order would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America.

3. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of the Illinois Commerce Commission of November 30, 1939, and said order is invalid in that said Act and order would take the property of Appellant without due process of law by requiring it to construct a pipeline into territory already being served by an interstate natural gas company, which Appellant cannot lawfully do without obtaining a certificate [fols. 27-29] of convenience and necessity from the Federal Power Commission under the provisions of the Natural Gas Act, and which if done without such authority, would cause Appellant to incur liability to heavy penalty under the Natural Gas Act and to a probable loss of its investments in the pipeline ordered to be constructed.

4. The conclusions of law of the Illinois Commerce Commission to the effect that Appellant's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence.

5. The Circuit Court of Coles County erred in affirming the order of the Illinois Commerce Commission entered by said Commission on November 30, 1939.

[fol. 29-1] IN SUPREME COURT OF ILLINOIS

[Title omitted]

Additional Abstract of Record—Filed December 3, 1940

The abstract filed by Respondent-Appellant makes only brief reference to Petitioner's Exhibit A, the Order of the

Illinois Commerce Commission in Commission Docket No. 21882, in which the Commission refused to approve a contract entered into by Central Illinois Public Service Company, Petitioner-Appellee, with Indiana Consumers Gas and By-Products Company, a gas supply company of the State of Indiana, and ordered the first named Company [fol. 29-2] to take other steps to procure a source of supply of gas.

The abstract contains only excerpts from Respondent's Exhibit 1, the Contract entered into between the Illinois Natural Gas Company, Respondent-Appellant, and the Panhandle Eastern Pipe Line Company, for the approval of which by the Commission the Respondent-Appellant Company made application in Commission Docket No. 26563.

The abstract also contains only excerpts from Petitioner's Exhibit B, the Order of the Illinois Commerce Commission in Commission Docket No. 26563, in which the Commission approved the contract above referred to between Illinois Natural Gas Company, Respondent-Appellant, and the Panhandle Eastern Pipe Line Company.

Counsel for the Commission and Petitioner-Appellee believe that the full text of these Exhibits which were before the Commission and, as shown by the Order of the Commission here appealed from, were considered by it, should be before the Court in passing upon this case.

The Exhibits are accordingly here set forth in full.

[fol. 29-3] PETITIONER'S EXHIBIT "A"

"State of Illinois

Illinois Commerce Commission

21882

"CENTRAL ILLINOIS PUBLIC SERVICE COMPANY in the Matter of Application for Approval of Contract Entered Into by Applicant with the Indiana Consumers Gas & By-Products Company April 30, 1932, for Natural Gas to Be Furnished at Mattoon, Charleston, Paris and Effingham and Adjacent Municipalities

Order

"By the Commission:

"On June 30, 1932, the petitioner, Central Illinois Public Service Company, filed its petition in the above entitled

cause, and thereafter on October 24, 1933, amended the same, asking approval by the Commission of a proposed contract between the petitioner and the Indiana Consumers Gas & By-Products Company, a corporation organized and existing under the laws of Delaware and qualified to do business in the State of Indiana, hereinafter referred to as the "Indiana Consumers," under the terms of which said contract Indiana Consumers was to furnish to the petitioner at a point on the state line between the states of Illinois and Indiana natural gas required by petitioner in rendering a public utility gas service in the cities of Paris, Charleston, Mattoon and Effingham and certain other smaller intermediate communities in the State of Illinois. The cause was [fol. 29-4] first heard on July 19, 1932, and then continued from time to time for further hearing until June 10, 1936, when it was marked "Heard and Taken."

"From the evidence introduced at the hearing, it appears that the petitioner is a corporation organized and existing under the laws of the State of Illinois, owning and operating, with charter powers so to do, a gas transmission line extending from a point on the Illinois-Indiana state line to the city of Paris, thence to the city of Mattoon via the city of Charleston, and thence to the city of Effingham, passing through various smaller intermediate communities; that it also owns and operates in the above named cities and intermediate communities gas distribution systems and other gas equipment and apparatus; and that in the ownership and operation of all the aforesaid property the petitioner is a public utility subject to the jurisdiction of the Commission.

"The evidence further shows that the contract submitted for approval mentions a heating value content for the gas to be furnished of approximately 950 British thermal units per cubic foot, but expressly provides that Indiana Consumers may furnish, without penalty, natural gas of a heating value content of not less than 900 British thermal units per cubic foot.

"It further appears from the evidence that during the past three or four years natural gas has been furnished to the petitioner by the Indiana Consumers for the gas public utility service rendered by the petitioner in the above named [fol. 29-5] cities and in the intermediate communities above referred to, and that during said period the demand for gas public utility service has rapidly increased, and in the

future will continue to increase, due to an increased demand in said cities and communities for gas for space heating purposes.

"It further appears from the evidence that during the past heating season of 1935-1936 the supply of natural gas obtained by petitioner as above set forth was inadequate to meet the gas public utility needs of petitioner in said cities and communities, and that in view of the probable future increase in the demand for petitioner's gas public utility service in said cities and communities it will be necessary that provision be made by petitioner for obtaining an additional supply.

"It further appears from the evidence that under said proposed contract the price to be paid by petitioner for said natural gas is 37½¢ per thousand cubic feet, except for gas for certain industrial uses for which a lower rate is provided, but of which little, if any, is required by petitioner in said cities and communities.

"It further appears from the evidence that the Panhandle Illinois Pipe Line Company, a corporation organized and existing under the laws of the State of Illinois, owns and operates, as a public utility, gas transmission pipe lines for the supply of natural gas to gas distributing companies in Illinois, at wholesale, and as part of its equipment in so doing maintains and operates a large natural gas transmission main at a distance of only approximately [fol. 29 6] eighteen miles from the said city of Mattoon from which said company could be required as a public utility to furnish petitioner with an adequate supply of natural gas for petitioner's aforesaid public utility needs of a heating value of approximately 1000 British thermal units per cubic foot, and that such supply could be obtained by petitioner at a materially lower cost to petitioner than the gas of lower heating value to be supplied under the proposed contract.

"The Commission having considered the evidence and being fully advised in the premises, finds:

"(1) that the petitioner is a public utility subject to the jurisdiction of the Commission and that the proposed contract is one which should, and by its express terms is required to, be approved by the Commission in order to have legal effect, and that the Commission has full and complete jurisdiction over both the parties and the subject matter;

"(2) that the supply of gas received by the petitioner during the past heating season of 1935-1936 was inadequate to meet the gas public utility demands of the petitioner in the above named cities and above referred to communities;

"(3) that the demand for public utility natural gas service in the above named cities and above referred to communities is increasing and will continue to increase, particularly for space heating purposes;

"(4) that in order to render adequate gas public utility service in the aforesaid cities and in the communities above [fol. 29-7] referred to, petitioner should make more full and complete provisions whereby it will be assured of an adequate supply of gas at all times;

(5) that the proximity of the gas main of the Panhandle Illinois Pipe Line Company to the district served by petitioner and the assurance of an adequate supply of gas to be obtained therefrom offer a method by which petitioner can, either by way of dividing petitioner's requirements between two separate sources of supply or by obtaining petitioner's full requirements from a single ample source make ample provisions whereby petitioner's present and future increased demand for gas public utility service in the above mentioned cities and the communities above referred to will be fully met, and that this should be done;

(6) that in view of the aforesaid inadequate supply, the contract provisions for heating value and cost, the aforesaid contract should not be approved;

(7) that petitioner should, at such early date as will permit such installations, modifications or changes in its method of obtaining its natural gas requirements for its gas public utility service to be rendered in the above named cities and the communities above referred to during the coming heating season of 1936-1937, submit to this Commission such plan or method as will adequately care for petitioner's requirements therein.

"It is Therefore Ordered by the Commission that the proposed contract be, and the same is hereby, disapproved.

"It is Further Ordered that the petitioner submit to the [fol. 29-8] Commission such plan or method for obtaining a supply of natural gas in quantities ample to meet petitioner's reasonable future requirements in the above named

cities and in the communities above referred to, and that such plan or method be submitted by the petitioner at such early date as will enable petitioner to procure such reasonably ample supply for the coming heating season of 1936-1937.

"By order of the Commission at Chicago, Illinois, this 18th day of June, 1936.

(Signed) William W. Hart, Secretary." (Seal.)

RESPONDENT'S EXHIBIT 1

"Agreement made and entered into as of the 30th day of June, 1938, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Eastern), party of the first part, and Illinois Natural Gas Company, a corporation of the State of Illinois (hereinafter called Illinois), Party of the Second Part.

"Eastern represents that it owns natural gas production facilities and gas purchase contracts in the States of Texas, Oklahoma and Kansas and a natural gas transmission pipe line extending from its production area to a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line and that it will be able to have available at the several places of delivery hereinafter designated sufficient [fol. 29-9] quantities of natural gas to fulfill the requirements of this Agreement.

"Illinois represents that it owns certain gas transmission pipe lines extending from the pipe lines of Eastern in the State of Illinois to various cities and communities in said state, from which pipe lines it sells gas to consumers directly and at wholesale to various distributing companies in the State of Illinois, and also sells gas to certain rural customers adjacent to the main line of Eastern in said state.

"Eastern desires to sell to Illinois and Illinois desires to purchase from Eastern, a supply of natural gas to meet the present and future requirements of the present customers and communities aforesaid, as well as any additional customers and communities in the central Illinois area which might hereafter be served with natural gas by Illinois.

"Now, Therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

"Article I

Definitions

"Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

"1. The "Effective Date" of this Agreement shall mean the first day of March, 1938.

[fol. 29-10] "2. The term "day" wherever used in this Agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time.

"3. The term "month," wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. Standard Time on the 26th day of a calendar month and ending at seven o'clock A. M. Standard Time on the 26th day of the next succeeding calendar month.

"4. "Industrial Customer" shall mean an industrial customer of Illinois or of a distributing company supplied by Illinois, who purchases gas under a special contract or rate schedule providing for the curtailment, interruption or discontinuance of delivery in the event of an insufficiency in the supply of gas available for such delivery.

"5. The term "places of delivery" wherever used in this Agreement shall mean the points of connection of any present or future spur or lateral lines or farm taps of Illinois with the pipe line or lines of Eastern in the State of Illinois at which gas is delivered or deliverable to Illinois, or such other point or points as may be mutually agreed upon.

Article II

"Scope of Agreement

"1. Commencing with the effective date of this Agreement, and for the period provided in Article III hereof, Eastern agrees to sell and deliver to Illinois and Illinois agrees to buy and receive from Eastern, all of the natural [fol. 29-11] gas required by Illinois for resale by Illinois to its present and future direct customers including farm tap customers along its own lines and along the lines of Eastern in the State of Illinois and to the several distribut-

ing companies now served or hereafter to be served by Illinois in the central Illinois territory covered by certificates of convenience and necessity heretofore granted to Illinois, or its predecessor, or which might hereafter be applied for by and granted to Illinois in the general territory now being served by it with natural gas to enable it and the said distributing companies to serve any and all present and future customers in the communities now or hereafter served.

"2. In the event that Illinois shall desire to purchase natural gas for ultimate resale to any present or prospective Industrial Customer, Eastern agrees that it will supply such gas to Illinois subject to its having available, in its sole judgment and discretion and in view of its then existing commitments, a sufficient supply of natural gas at the place or places of delivery for such purpose; Provided, that deliveries of gas for ultimate resale to Industrial Customers shall always be subject to temporary curtailment, interruption or discontinuance in the event of temporary shortage from any cause whatsoever, it being the intention hereof that domestic and commercial customers shall always take precedence over Industrial Customers in event of any shortage in the supply of gas.

[fol. 29-12] Article III

"Term of Agreement

"The term of this Agreement shall be for a period of five (5) years beginning with the Effective Date hereof, and thereafter until cancelled by either party upon giving to the other twelve (12) months' notice in writing; Provided, that if so cancelled before the expiration of twenty (20) years following the Effective Date hereof and if at the time of such cancellation either or both of the parties hereto are subject to regulation by a duly constituted regulatory body or bodies, then such cancellation shall not become effective unless and until approved by a duly constituted regulatory body having jurisdiction over either or both of the parties hereto.

Article IV

"Quality

"1. Eastern agrees that the gas delivered hereunder shall be natural gas except (a) that said natural gas shall at

all times comply with the requirements as to purity expressed in this Agreement; (b) that Eastern may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane and/or other hydro-carbons (excepting methane) from said natural gas, or may increase or reduce the heat content of said natural gas before delivery thereof to Illinois; and (c) that Eastern may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be [fol. 29-13] required in its transmission from the wells to the point or points of delivery.

"The gas delivered hereunder is assumed but not guaranteed to have a gross heating value of 1,000 British thermal units per cubic foot when saturated with water vapor at a temperature of 60° F. and at a pressure of 30 inches of mercury. In no event shall the gross heating value of the gas delivered hereunder fall below 950 British thermal units per cubic foot, nor exceed 1,050 British thermal units per cubic foot.

"2. Eastern agrees that the gas delivered hereunder

"(a) shall be commercially free from solid and/or liquid matter, dust, gums and/or gum forming constituents;

"(b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet and that this purity requirement shall be determined by quantitative test after presence of H2S has been indicated by qualitative test which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging from a jet upon the test paper, and which qualitative test shall be deemed to be satisfied if after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas;

[fol. 29-14] "(c) shall not contain more than twenty (20) grains of total sulphur per hundred (100) cubic feet;

"(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the tempera-

ture and pressure of the gas in the main pipe line at a point approximately fifty (50) feet in advance of Eastern's meter inlet header, and that the water shall not be present in liquid phase.

Article V

"Measurements

"1. Measurements of volume and heat value of gas delivered by Eastern to Illinois hereunder shall be at the following points:

"Volume

"(a) The volume of gas so delivered shall be measured at the meter or meters of Eastern, which, together with any building and with all other collateral equipment required for the final determination of volume, Eastern agrees to install, maintain and operate at the several places of delivery, except that in instances where deliveries to customers of Illinois are made at Eastern's main line, such meters shall be installed, maintained and operated by Illinois, and except that when practicable the parties hereto may by mutual agreement establish other or different points of measurement than those herein specified.

"Heat Value

"(b) The heat value of gas delivered by Eastern hereunder shall be determined by a calorimeter or calorimeters of Eastern, which Eastern agrees to install, maintain and [fol. 29-15] operate at its Glenarm Compressor Station, or at such other place as may be agreed on between the parties.

"2. The measurement of volume of gas delivered by Eastern to Illinois hereunder shall be made in the following manner:

"Volume

"(a) The unit of volume for the purpose of measurement shall be one cubic foot of natural gas at a pressure of fourteen and nine-tenths (14.9) pounds per square inch absolute and at a temperature of sixty (60) degrees Fahrenheit. The average absolute (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of the actual elevation or location of the point of delivery above sea level or of varia-

tions in such barometric pressure from time to time. For meters of the orifice type, the following factors shall be given due consideration, viz.:

"(i) For each delivery point at which the average daily delivery over an annual period shall exceed 150,000 cubic feet, the temperature of the natural gas flowing through the meter shall be obtained by the use of a recording thermometer so installed by Eastern that it may properly record the temperature of the natural gas flowing through the meter. The arithmetic average of the temperature recorded in each twenty-four hour day shall be used in computing measurements. For each delivery point, at which the average daily delivery over an annual period shall not exceed [fol. 29-16] 150,000 cubic feet, Eastern shall not be required to install a recording thermometer, and where such installation is not provided, the temperature of the gas for the purpose of measurement shall be assumed to be sixty (60) degrees Fahrenheit.

"(ii) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurements of gas deliveries until the end of such month or until changed by subsequent tests; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

"Heat Value

"The gross heating value of the gas per cubic foot, as defined in Section 2 above, shall be determined by taking the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked twice each month, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by [fol. 29-17] the U. S. Bureau of Standards and operated in accordance with methods recommended by said Bureau.

Article VI

"Metering Equipment

"1. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment used in measuring deliveries hereunder, and to customers of Illinois, and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts, together with calculations therefrom for the other party's inspection and verification, subject to return within ten (10) days after receipt thereof.

"2. The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from meters. The meter or meters shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause insofar as such protection is obtainable within practicable limits mutually agreed [fol 29-18] upon to embody the best knowledge and information available.

"3. Either party may install, maintain and operate such check measuring equipment as it shall desire, provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters of the other party. Either party shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of the party owning the same. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or adjusting done in connection with such check measuring equipment. Charts and records from said check measuring equipment installed by either party, together with calculations therefrom, shall be available to the other party for inspection and verifica-

tion, subject to return within ten (10) days after receipt thereof.

"4. All installations of measuring equipment applying to or affecting deliveries hereunder shall be made in such manner as to permit of accurate determination of the quantity of gas to be delivered and ready verification of the accuracy of measurement.

"5. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service [fol. 29-19] and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

"(a) By using the registration of any check meter or meters if installed and accurately registering;

"(b) By correcting the error if the precentage of error is ascertainable by calibration, test or mathematical calculation; or

"(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

"6. From time to time and at least once each month, the accuracy of all measuring equipment at the places of delivery except meters used for deliveries to farm tap customers, shall be verified, at the expense of the party owning the same in the presence of representatives of Eastern and Illinois, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If at any time either party shall notify the other party that it desires a special test of any meter, the parties hereto shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

[fol. 29-20] "7. If upon any test any meter is found to be not more than two per cent (2%) fast or slow, previous readings of such meters shall be considered correct in com-

puting the volume of gas delivered by Eastern to Illinois; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate by an amount exceeding two per cent (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days. If any test of any measuring equipment of either party shall be made at the request of the other party, with the result that such measuring equipment shall be found to register accurately or within two per cent (2%) of accuracy, the party requesting such test shall bear the expense thereof. The expense of all other tests shall be borne by the owner of such measuring equipment.

"8. The meters at the places of delivery where daily readings are practicable shall be read at seven o'clock Standard Time in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

"9. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

[fol. 29-21] Article VII

"Rate

"Illinois shall pay Eastern for all gas sold and delivered by Eastern to Illinois hereunder, fair and reasonable prices to be determined from time to time, which prices shall give due consideration, among other pertinent factors, to the demand of Illinois upon the pipe line transmission facilities of Eastern and the respective investments of the parties hereto in property used and useful in delivering gas from Eastern's producing areas to Illinois customers.

Article VIII

"Billing

"1. Illinois shall, on or before the 8th day of each calendar month, furnish to Eastern a detailed statement showing the

volume and the billing price of all gas delivered to its customers during the preceding billing month.

"2. Eastern shall, on or before the 12th day of each calendar month, render to Illinois a statement showing the following:

"(a) The total volume of gas delivered hereunder by Eastern to Illinois during the preceding billing month; with complete computation showing procedure by which determined;

"(b) The payment then due from Illinois to Eastern for gas delivered during the preceding billing month.

"3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party [fol. 29-22] to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

"Payments

"1. Illinois agrees to pay to Eastern at its designated office on or before the 25th day of each calendar month for the natural gas delivered by Eastern to Illinois hereunder during the preceding billing month, according to the measurements, computations and prices herein provided and billed by Eastern in the statement for said month.

"2. If it shall be found at any time that an error has been made in the amount billed in any statement rendered by Eastern against Illinois hereunder, such error shall be adjusted and payment made, but without interest, within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty (60) days from the date of discovery of any such error, but in any event within twelve (12) months from the date of such statement.

Article X

"Operations By Eastern And Illinois

"1. Eastern agrees from time to time to make such alterations in its pipe line system as may be necessary to insure

its adequate capacity for the delivery of gas to Illinois in accordance with the requirements of this Agreement, and to maintain, directly or through subsidiaries or through [fol. 29-23] gas purchase contracts, a sufficient supply of natural gas to supply the requirements of Illinois under this Agreement.

"2. Illinois agrees that it will at all times exercise its best efforts to retain as customers the distributing companies now served and will not voluntarily terminate, except for cause or intentionally commit any act or do anything which would entitle any of said distributing companies to terminate or discontinue the purchase of natural gas from Illinois. Illinois agrees, from time to time, to make such alterations in or additions to its pipe line system as may be necessary to insure its adequate capacity for the transmission and delivery of gas to said several distributing companies.

"3. Illinois agrees to operate, keep in repair and maintain its pipe lines and facilities in such manner as to assure a minimum amount of loss by reason of inaccuracy of sales meters, leakage, or other transmission loss. In event inaccuracies in sales meters, leakage or other transmission loss suffered in the system of Illinois in any month shall exceed the rate of loss suffered in Eastern's transmission system, then, unless Illinois upon notice from Eastern, takes prompt action to reduce the rate of loss to a basis comparable to Eastern's experience on its system, said Eastern shall have the right to enter upon the properties of Illinois and make such repairs and perform such maintenance work as it may reasonably deem necessary to accomplish such reduction. In such event Illinois shall promptly reimburse [fol. 29-24] Eastern for all reasonable cost and expense, incurred by it in so doing.

"4. Eastern agrees to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply to Illinois of gas in the quantity and of the quality required by this Agreement.

Article XI

"Places and Points of Delivery

"The places of delivery for all gas to be delivered by Eastern to Illinois hereunder shall be at the points of con-

nection between the facilities of the parties hereto in the State of Illinois.

Article XII

"Possession of Gas

"1. As between the parties hereto, Eastern shall be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Illinois at the points of delivery, after which Illinois shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

"2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the points of delivery of the gas as hereinbefore specified to [fol. 29-25] be the point of division of responsibility between the parties.

Article XIII

"Pressure

"Eastern agrees to deliver or cause to be delivered gas hereunder at such pressures as Illinois may require to furnish adequate service to its customers, up to but not exceeding two hundred pounds to the square inch gauge pressure, at the points of delivery. Eastern agrees that it will use due care and diligence to furnish gas to Illinois at a uniform pressure.

Article XIV

"Warranty of Title to Gas

"Eastern agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Illinois and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the possession of the

gas passes to Illinois or which may be levied and assessed upon the delivery thereof to Illinois. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Illinois may withhold payments under this Agreement up to the amount of such claim without interest until such claim has been finally determined, as [fol. 29-26] security for the performance of Eastern's obligations with respect to such claim under this Section, or until Eastern shall have furnished bond to Illinois, in an amount and with sureties satisfactory to Illinois, conditioned for the protection of Illinois with respect to such claim.

Article XV

"Force Majeure

"1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

"2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or [fol. 29-27] contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

Article XVI

"Miscellaneous

"1. This Agreement is subject to present and future valid statutes and orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto.

"2. There shall be no modification of the terms and provisions hereof, except by the execution of supplementary written contracts.

"3. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

"4. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Eastern or Illinois, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; but other- [fol. 29-28] wise neither party shall assign this Agreement or any of its rights hereunder, unl ss it shall first have obtained the consent thereto of the other party.

"5. This Agreement supersedes and cancels all previous contracts, agreements and understandings between the parties hereto or their predecessors covering the sale and delivery of gas by Eastern to Illinois, or to the predecessor of Illinois.

"In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written."

PETITIONER'S EXHIBIT "B"

"State of Illinois

Illinois Commerce Commission

26563

"In the matter of the joint application of Panhandle Illinois Pipe Line Company and Illinois Natural Gas Company for an order consenting and approving the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company.

"ORDER

"By the Commission:

"On February 23, 1938 Panhandle Illinois Pipe Line Company and Illinois Natural Gas Company, petitioners herein, [fol. 29-29] filed with the Commission their joint sworn application in the above entitled matter, requesting the approval of a contract (copy of which is attached to said joint application as Exhibit "1") providing for the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its property and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company for the consideration and upon the terms, provisions and conditions set forth in said contract, and for permission and authority to carry out the terms, provisions and conditions thereof.

"Said joint application was duly set for hearing by the Commission on February 23, 1938 and on said date said matter was heard by a duly authorized examiner of the Commission, and evidence, both oral and documentary, was introduced by petitioners in support of said application.

"From the sworn joint application filed herein and the evidence offered by petitioners at the hearing herein, it appears that Panhandle Illinois Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is a public utility operating as such in said state, and carries on a gas public utility business within the State of Illinois under certificates of convenience and necessity heretofore granted to it or its predecessor by this Commission; that its principal office and

place of business within the State of Illinois is located at Glenarm, Sangamon County, Illinois; that said Panhandle Illinois Pipe Line Company has heretofore issued and has [fol. 29-30] outstanding 42,980 shares of its common capital stock of the par value of $100.00 per share, and has also heretofore issued its promissory notes in the aggregate principal amount of $5,000,000; that all of its said capital stock and promissory notes are owned by Panhandle Eastern Pipe Line Company, a Delaware corporation.

"It further appears that Illinois Natural Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office within the State of Illinois, located at Glenarm, Sangamon County, Illinois; that under its articles of incorporation, copy of which was introduced in evidence, it has an authorized capital stock of 28,000 shares of no par value, none of which has heretofore been issued or is outstanding; that said Illinois Natural Gas Company has charter powers to operate as a public utility and has authority under its articles of incorporation, among other things, to conduct a general gas public utility and pipe line business within the State of Illinois.

"It further appears that Panhandle Illinois Pipe Line Company now owns and operates a system of gas pipe lines, compressor stations, meter and regulator stations and appurtenances and facilities used in connection with the operation thereof within the State of Illinois; that said petitioner is now engaged in the business of purchasing, transporting, selling and furnishing natural gas to public utilities within the State of Illinois and to other consumers of natural gas [fol. 29-31] within said state, and is also engaged in the business of transporting natural gas across the State of Illinois, said gas entering the State of Illinois at the Missouri-Illinois State line and leaving the state at the Illinois-Indiana State line; that all of the gas transported, sold and delivered by said petitioner within the State of Illinois and all of the gas transported by it across the State of Illinois is purchased and received by said petitioner from Panhandle Eastern Pipe Line Company, its parent corporation.

"It further appears from the joint application and from the evidence introduced at the hearing herein; that the property and facilities owned by Panhandle Illinois Pipe Line Company consist of;

"(First) A system of lateral pipe lines, meter stations, regulator stations and other appurtenances and facilities used exclusively in the transportation, delivery and sale of natural gas to customers within the State of Illinois; that said lateral pipe lines, meter stations, regulator stations and other appurtenances and facilities used in connection therewith are properly used, useful or necessary to said petitioner in the conduct and discharge of its duties and functions as a public utility in the State of Illinois; that said property, appurtenances and equipment are specifically described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit [fol. 29-32] "A" and made a part hereof, to the same extent, purpose and effect as if written at length herein; and

"(Second) A combination main transmission pipe line of 22" and 20" diameter pipe, extending from a point near Pleasant Hill, in Pike County, Illinois, in an easterly direction to a point approximately four miles west of the Indiana-Illinois state line in Edgar County, Illinois; a pipe line 22" in diameter paralleling the aforesaid line, extending from a point near Pleasant Hill, in Pike County, Illinois, in an easterly direction a distance of approximately nineteen miles; a gas compressor station and the land upon which it has been constructed and is being operated and maintained, located near Glenarm, Sangamon County, Illinois, and a gas compressor station, together with the land upon which it has been constructed and is being operated and maintained, at a location near Tuscola, Douglas County, Illinois, together with the rights of way, easements, grants and permits over and across lands and other property upon which said pipe line and compressor stations have been constructed and are being operated and maintained, together with certain other appurtenances and facilities used in connection with the operation and maintenance of said main pipe line; that said main pipe line, compressor stations, appurtenances and facilities are being used by petitioner, Panhandle Illinois Pipe Line Company in connection with the transportation of natural gas as aforesaid across the state, and also in connection with the furnishing of natural gas to public utilities within the State of Illinois, [fol. 29-33] and to other consumers of natural gas within

said state; that a detailed description of said main pipe lines, compressor stations, appurtenances and facilities is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part hereof, to the same extent, purpose and effect as if written at length herein.

"It further appears from the joint application herein and from the evidence that on the 18th day of February, 1938 a contract was made and entered into between petitioner, Panhandle Illinois Pipe Line Company, petitioner, Illinois Natural Gas Company, and Panhandle Eastern Pipe Line Company (which contract is expressly made subject to the approval of this Commission), under the terms of which petitioner, Panhandle Illinois Pipe Line Company contracted and agreed to transfer, assign and convey to Illinois Natural Gas Company its lateral pipe lines, meter and regulator stations, the rights of way, grants, easements, licenses and permits under which said lateral lines and properties were constructed and are being operated and maintained and all of the certificates of convenience and necessity heretofore granted by this Commission to said Panhandle Illinois Pipe Line Company, or its predecessor, for the construction and operation thereof, and for the sale and delivery of natural gas to customers within the State of Illinois; that a [fol. 29-34] full and complete description of the property and assets which said Panhandle Illinois Pipe Line Company has so agreed to transfer, assign and convey to Illinois Natural Gas Company is contained in the schedule hereinabove referred to, marked Exhibit "A", attached hereto and made a part hereof; that under the terms of said contract Illinois Natural Gas Company, one of the petitioners herein contracted and agreed that in consideration of the transfer, assignment and conveyance of said property and assets to it by said Panhandle Illinois Pipe Line Company to issue to said Panhandle Illinois Pipe Line Company all of Illinois Natural Gas Company's authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract it is further provided that simultaneously with the transfer, assignment and conveyance of the aforesaid property to Illinois Natural Gas Company, petitioner, Panhandle Illinois Pipe Line Company will trans-

fer, assign and convey in liquidation to Panhandle Eastern Pipe Line Company, a Delaware corporation, all of the remainder of its properties and assets of every kind and description, of whatsoever character and wheresoever situated, which said properties so to be transferred to Panhandle Eastern Pipe Line Company are specifically described in the schedule hereinabove referred to, marked Exhibit "B," attached hereto and made a part hereof; that under the terms of said contract and in consideration of the transfer, assignment and conveyance to it of such properties and assets of Panhandle Illinois Pipe Line Com- [fol. 29-35] pany, said Panhandle Eastern Pipe Line Company agrees to surrender to Panhandle Illinois Pipe Line Company for cancellation and redemption all of Panhandle Illinois Pipe Line Company's outstanding capital stock and debt consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes heretofore issued to said Panhandle Eastern Pipe Line Company, and said Panhandle Eastern Pipe Line Company further agrees, under said contract, to assume all of the remainder of the debts, obligations and liabilities of Panhandle Illinois Pipe Line Company; that the respective boards of directors of said Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company have adopted resolutions approving said contract and have authorized the officers of said respective companies to execute the same and do any and all things necessary to carry out the terms and provisions thereof.

"It further appears that under the terms of said contract, Illinois Natural Gas Company, upon acquisition of the properties and assets of Panhandle Illinois Pipe Line Company, described in the schedule hereinabove referred to, marked Exhibit "A" and attached hereto, proposes to own and operate the same in the conduct of a general gas public utility business within the State of Illinois under the jurisdiction of this Commission; that it proposes to and will carry on the gas public utility business now being carried on by Panhandle Illinois Pipe Line Company with [fol. 29-36] respect to rendering of gas service directly to consumers or furnishing gas to other public utilities within the State of Illinois, in substantially the same manner as said business is now being conducted and carried on by

said Panhandle Illinois Pipe Line Company; that it proposes to and represents that it will file with this Commission rate schedules, rules, regulations and conditions of service under which its said gas public utility business will be carried on and conducted substantially identical with the rate schedules, rules, regulations and conditions of service now on file with this Commission, and under which the gas public utility business of Panhandle Illinois Pipe Line Company, with respect to Illinois consumers, and with respect to furnishing of gas for resale to Illinois public utilities, is now being carried on and conducted.

"It further appears that upon consummation of the transfer, assignment and conveyance of all of the property and assets of Panhandle Illinois Pipe Line Company under the terms and provisions of said contract, Illinois Natural Gas Company proposes to enter into a contract with its then parent corporation, Panhandle Eastern Pipe Line Company, for a supply of natural gas of adequate quantities and of proper heating value and purity to enable it to properly carry out its duties and obligations as a gas public utility within the State of Illinois; that under the terms of said proposed contract delivery of natural gas to said Illinois Natural Gas Company will be made at the points of connection of any present or future spur or [fol. 29-37] lateral lines or farm taps of Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company.

"It further appears that since Illinois Natural Gas Company will be able to obtain delivery of natural gas at the said points of connection between its lines and those of Panhandle Eastern Pipe Line Company the ownership of the main pipe line, compressor station and other properties described in the schedule hereinabove referred to as Exhibit "B" and agreed to be transferred and conveyed to Panhandle Eastern Pipe Line Company will not be necessary to the said Illinois Natural Gas Company in the conduct of a gas public utility business in Illinois; that a copy of the gas contract so proposed to be entered into by said Illinois Natural Gas Company with said Panhandle Eastern Pipe Line Company is attached to the joint application herein, marked Exhibit "8" and made a part thereof, reference to which is hereby made. It further appears that it is intended that upon consummation of the several transactions pro-

vided for in the aforesaid contract, Panhandle Illinois Pipe Line Company will cease to operate as a public utility within the State of Illinois, and that appropriate steps will be taken in due course to effect a dissolution of said company.

"It further appears that upon consummation of all of the transactions contemplated under the terms of said contract, all of the property and assets now owned by Pan- [fol. 29-38] handle Illinois Pipe Line Company and used, useful or necessary exclusively in the furnishing of gas to consumers and to other public utilities within the State of Illinois and not used in the transportation of gas across and to points beyond this state, will be owned and operated by Illinois Natural Gas Company; that the value of the physical properties to be transferred to Illinois Natural Gas Company, as the same is now carried on the books of Panhandle Illinois Pipe Line Company, is approximately $2,695,000; that there is also to be transferred to Illinois Natural Gas Company current assets of $25,000 in cash and certain accounts receivable, which have been estimated to approximate the sum of $170,000; that the total book value of all property and assets thus to be transferred to Illinois Natural Gas Company will approximate $2,890,000; that there is now carried on the books of Panhandle Illinois Pipe Line Company a certain reserve for retirements and renewals; that the portion of such reserve for retirements and renewals applicable to the physical properties to be transferred to Illinois Natural Gas Company in the amount of $224,000 will likewise be transferred to the books of Illinois Natural Gas Company; that in addition thereto Illinois Natural Gas Company proposes to assume liability for accrued advalorem taxes on the properties thus being transferred to it, amounting to approximately $14,000. From the foregoing, which is shown by the joint application herein, and from the testimony offered at the hearing hereof, it appears that upon consummation of said several transac- [fol. 29-39] tions, all of the investment of Illinois Natural Gas Company will be represented by an issue of capital stock in the amount of 28,000 shares of no par value and that said company will upon acquisition of said property and assets and upon commencement of business have no underlying or outstanding bonds, promissory notes or debts of any kind or character.

"It further appears that the ownership by Illinois Natural Gas Company of the property proposed to be trans-

ferred, assigned and conveyed to it under said contract, free of any underlying debt, and with sufficient cash working capital, which will be provided to said Illinois Natural Gas Company under the terms of the aforesaid contract, together with the right to obtain a supply of natural gas, and other rights under aforesaid contracts, will enable said Illinois Natural Gas Company to perform its duties as a public utility in serving natural gas to the public directly and indirectly within the State of Illinois. It further appears that it will be to the benefit of said companies, and the interests of the public will be convenienced if the transfer, assignment and conveyance of the properties of Panhandle Illinois Pipe Line Company, is carried out in the manner and in accordance with the terms and provisions of said contract. It further appears that after the several transactions contemplated under the terms of the aforesaid contract have been carried out, the public utility business now being carried on and conducted by Panhandle Illinois Pipe Line Company within the State of Illinois will be car- [fol. 29-40] ried on and conducted by Illinois Natural Gas Company.

"The Commission having duly considered the joint sworn application filed herein, and the evidence, both oral and documentary, submitted in support thereof, and the representations and statements of counsel representing the joint petitioners herein, and being fully advised in the premises, is of the opinion and finds:

"(1) that the Commission has jurisdiction of the subject matter, of the joint application and of the joint petitioners herein;

"(2) that Panhandle Illinois Pipe Line Company, one of the petitioners in this cause, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with an outstanding capital stock of 42,980 shares of the par value of $100.00 per share, and outstanding promissory notes aggregating $5,000,000; that said petitioner is a public utility operating as such within the State of Illinois under the jurisdiction of this Commission; that all of said capital stock and debt is owned by Panhandle Eastern Pipe Line Company, a Delaware corporation;

"(3) that petitioner, Illinois Natural Gas Company, is a corporation duly organized and existing under the laws of

the State of Illinois, with an authorized capital stock of 28,000 sh .es of no par value, none of which has been issued; that said petitioner is authorized by its articles of incorporation to engage in business in the State of Illinois as a public utility, and is authorized to construct, own, operate and maintain a system of gas pipe lines and mains, [fol. 29-41] appurtenances and facilities for the transportation, delivery, distribution and sale of natural gas, and to render a general gas public utility business in the State of Illinois;

"(4) that Panhandle Eastern Pipe Line Company is a c poration duly organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to transact business in the State of Illinois as a foreign corporation;

"(5) that Panhandle Illinois Pipe Line Company now owns and operates a system of main pipe lines, lateral pipe lines, compressor stations, meters, meter stations, regulator stations, fee lands, certificates of convenience and necessity, rights of way, easements, grants, licenses and permits, and other appurtenances, equipment and facilities used in carrying on its business in the State of Illinois, and in the transportation of natural gas across the State of Illinois; that the said gas so transported across the State enters Illinois at the Missouri-Illinois state line and leaves Illinois at the Illinois-Indiana state line; that the property and assets of Panhandle Illinois Pipe Line Company used, useful and necessary exclusively in the conduct of a general gas public utility business in the State of Illinois are described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part of this order; that a description of the property and assets owned by said Panhandle Illinois Pipe Line Company used in the transportation of natural gas into, across and to points beyond the state of Illinois, as [fol. 29-42] well as in the delivery of gas within the State of Illinois, is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company,"

attached hereto, marked Exhibit "B" and made a part of this order;

"(6) that on the 18th day of February, 1938, a contract was made and entered into between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, a copy of which is attached to the joint application herein, marked Exhibit "1" and made a part thereof (which said contract is expressly made subject to approval by this Commission), under the terms of which Panhandle Illinois Pipe Line Company has agreed to transfer, assign and convey to Illinois Natural Gas Company, an Illinois corporation, the properties and assets owned by it, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, a description of which property and assets is contained in the schedule hereinabove referred to, marked Exhibit "A" and attached to this order; that under said contract Illinois Natural Gas Company agreed to issue to Panhandle Illinois Pipe Line Company all of its authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract Panhandle Illinois Pipe Line Company further agreed that simultaneously with the transfer, assignment and conveyance of said properties described in Exhibit "A", attached hereto, to Illinois Natural Gas Company, it would transfer, assign and convey to Panhandle Eastern Pipe Line Company, a Delaware corporation, all the remainder of its properties and assets, con-[fol. 29-43] sisting of that part of the properties and assets of Panhandle Illinois Pipe Line Company, not used exclusively in the furnishing of gas to consumers and other public utilities in the State of Illinois, a description of which property and assets is contained in the schedule herein above referred to, marked Exhibit "B" and attached to this order; that in consideration of such transfer, assignment and conveyance, Panhandle Eastern Pipe Line Company agreed to surrender to Panhandle Illinois Pipe Line Company all of the outstanding capital stock and debt of Panhandle Illinois Pipe Line Company, consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes; that under the terms of said contract said Illinois natural gas in Texas and Kansas and transmits it through Panhandle Eastern Pipe Line Company for a supply of nat-

ural gas to be delivered to Illinois Natural Gas Company at the several points of connection of present or future spur or lateral lines or farm taps of said Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company; that when such gas contract is entered into the ownership of the main pipe lines, compressor station and other properties described in the schedule hereinabove referred to as Exhibit "B" will not be necessary to the Illinois Natural Gas Company in the conduct of a natural gas public utility business in Illinois;

"(7) that the consideration agreed upon between said companies for the transfer, assignment and conveyance of all of the properties and assets of Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company and Pan-[fol. 29-44] handle Eastern Pipe Line Company, respectively, under the terms of said contract, is fair and reasonable and it is to the best interests of said companies that the transfer, assignment and conveyance of the properties and assets of Panhandle Illinois Pipe Line Company be consummated in the manner set forth in said contract, and that the ownership of the properties to be transferred by Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, free of any underlying debt, together with the gas contract herein mentioned, will enable Illinois Natural Gas Company to perform the duties of a gas public utility in the State of Illinois, and that the public will be convenienced by the transfer, assignment and conveyance of all of the properties and assets of Panhandle Illinois Pipe Line Company, in the manner and for the consideration provided for in said contract;

"(8) that said contract dated February 18, 1938, attached to the joint application herein as Exhibit "1", providing for the transfer, assignment and conveyance of all of the properties of Panhandle Illinois Pipe Line Company in the manner therein set forth and for the consideration therein provided is fair and reasonable and should be approved;

"(9) that Panhandle Illinois Pipe Line Company should be authorized to execute, acknowledge and deliver to peti-

tioner, Illinois Natural Gas Company, such instruments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer, assign and convey to said Illinois Natural Gas Company its lateral [fol. 29-45] pipe lines and all appurtenances and equipment used or useful in connection with the operation thereof, together with all rights of way, grants, easements, licenses, permits, meter and regulator stations and station sites used in connection with the operation thereof, and all certificates of convenience and necessity for the construction, installation, maintenance and operation of said property, and for the sale and furnishing of natural gas through the same to the public directly or indirectly within the State of Illinois, and heretofore granted to said Panhandle Illinois Pipe Line Company, or its predecessor, by this Commission, a description of the property so to be transferred, assigned and conveyed to Illinois Natural Gas Company being contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be transferred, assigned and conveyed to Illinois Natural Gas Company," a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, and that consent to and approval of such transfer, assignment and conveyance should be granted;

"(10) that petitioner, Illinois Natural Gas Company proposes to issue the said 28,000 shares of its capital stock of no par value for the acquisition of property, which property is more fully described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part of this order; that the property to be acquired by the issuance of the said stock is reasonably required by Illinois Natural Gas Company in order to pro- [fol. 29-46] vide a gas public utility service in the State of Illinois; that said property is not, in whole or in part, reasonably chargeable to operating expenses or to income; and that the prayer of petitioner, Illinois Natural Gas Company for authority to issue, and of petitioner, Panhandle Illinois Pipe Line Company to acquire, all of the authorized 28,000 shares of capital stock of no par value of the Illinois Natural Gas Company for the aforesaid purpose is reason-

able and should be granted subject to the terms and conditions hereinafter provided;

"(11) that the main pipe line, compressor stations and other property, which under the terms of the aforesaid contract Panhandle Illinois Pipe Line Company proposes to transfer, assign and convey to Panhandle Eastern Pipe Line Company, a detailed description of which is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part hereof, constitutes property which upon consummation of the several transactions contemplated under the terms of the said contract dated February 18, 1938, and hereinafter authorized and approved, need not necessarily be owned by the Illinois Natural Gas Company, and that such ownership will not be necessary in the conduct of the gas public utility business of the last mentioned company in the State of Illinois; and that permission and authority should be granted to Panhandle Illinois Pipe Line Company to transfer, assign and convey the property described in said schedule, marked Exhibit "B" and attached hereto, to Panhandle Eastern Pipe Line [fol. 29-47] Company, and that consent to and approval of the transfer, assignment and conveyance of such property should be granted, and that said Panhandle Illinois Pipe Line Company should be authorized to execute, acknowledge and deliver to said Panhandle Eastern Pipe Line Company, a Delaware corporation, such instruments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer and convey such property to said Panhandle Eastern Pipe Line Company;

"(12) that there should be granted to petitioner, Illinois Natural Gas Company, permission and authority to acquire, own, operate and maintain the properties and assets of Panhandle Illinois Pipe Line Company, specifically described in the schedule marked Exhibit "A" and made a part hereof, and said petitioner should be further authorized to purchase, transport, furnish and sell natural gas to the public in the State of Illinois directly and indirectly, under the certificates of convenience and necessity to be transferred or assigned to it as herein authorized, and that

this Commission should consent to and approve the acquisition of said property by said company;

"(13) that petitioner, Illinois Natural Gas company, should be authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale by Illinois Natural Gas Company directly or indirectly to the public within the State of Illinois in substantially the form attached to the joint application herein, and marked Exhibit "8"; and

"(14) that said Illinois Natural Gas Company should be [fol. 29-48] authorized to acquire and own, and should be authorized to operate under, the several certificates of convenience and necessity heretofore granted by the Commission to said Panhandle Illinois Pipe Line Company, or its predecessor, described in the schedule marked Exhibit "A", attached hereto, the same as though said certificates had been granted by the Commission to Illinois Natural Gas Company in the first instance.

"It is Therefore Ordered that the contract by and between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, dated February 18, 1938, copy of which is attached to the joint application herein, marked Exhibit "1" providing for the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets, of whatsoever character and description, to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, respectively, for the consideration stated therein, be and the same is hereby approved, and the Commission consents to the execution and carrying out of the terms thereof.

"It is Further Ordered that Illinois Natural Gas Company be, and it is hereby, authorized to issue 28,000 shares of its capital stock of no par value and to deliver all of said stock to Panhandle Illinois Pipe Line Company in consideration for the acquisition of the following property and for no other purpose: the property and assets now owned by Panhandle Illinois Pipe Line Company and specifically de- [fol. 29-49] scribed in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to

Illinois Natural Gas Company" attached hereto, marked Exhibit "A" and made a part hereof.

"It is Further Ordered that Illinois Natural Gas Company shall enter the said 28,000 shares of its capital stock on its books at the net book value of the assets to be acquired under the contract of February 18, 1938 herein approved.

"It is Further Ordered that petitioner, Panhandle Illinois Pipe Line Company, is authorized to acquire the aforesaid 28,000 shares of capital stock of Illinois Natural Gas Company under the terms of the aforesaid contract of February 18, 1938 and to execute, acknowledge and deliver to petitioner, Illinois Natural Gas Company, such instruments, bills of sale, assignments, deeds of conveyance, and all other instruments needful or necessary to transfer, assign and convey to Illinois Natural Gas Company the property and assets now owned by it and specifically described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be transferred, assigned and conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part hereof, and the consent and approval of the Commission to such transfer, assignment and conveyance is hereby granted.

"It is Further Ordered that petitioner, Illinois Natural Gas Company, be and it hereby is granted permission and [fol. 29-50] authority to acquire, own, operate and maintain the properties and assets of Panhandle Illinois Pipe Line Company, described in the schedule marked Exhibit "A" and made a part of this order, and is further authorized to purchase, transport, furnish, sell and distribute natural gas to the public within the State of Illinois, both directly and indirectly in the manner and within the territories in which the Panhandle Illinois Pipe Line Company is now authorized to render such services under certificates of convenience and necessity heretofore granted by this Commission to the last mentioned company or its predecessor, and the consent and approval of the Commission to the acquisition of said properties and assets and the carrying on of such business is hereby granted.

"It is Further Ordered that petitioner, Panhandle Illinois Pipe Line Company be and it hereby is authorized to execute, acknowledge and deliver to Panhandle Eastern Pipe Line Company, a Delaware corporation, such instru-

ments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer, assign and convey to said Panhandle Eastern Pipe Line Company all of its main pipe lines, compressor stations and other properties described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part of [fol. 29-51] this order, and the consent and approval of the Commission to the transfer, assignment and conveyance of such property to Panhandle Eastern Pipe Line Company is hereby granted provided that Panhandle Eastern Pipe Line Company shall surrender to Panhandle Illinois Pipe Line Company for cancellation and redemption all of Panhandle Illinois Pipe Line Company's outstanding capital stock and debt consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes heretofore issued to said Panhandle Eastern Pipe Line Company, and that said Panhandle Eastern Pipe Line Company shall assume all of the remainder of debts, obligations and liabilities of Panhandle Illinois Pipe Line Company.

"It is Further Ordered that petitioner, Illinois Natural Gas Company, is hereby authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the State of Illinois, in the form of contract attached to the joint application herein and marked Exhibit "8", and that such contract be executed and a copy hereof filed with this Commission before the Panhandle Illinois Pipe Line Company shall cease to operate as a public utility in the State of Illinois.

"It is Further Ordered that the approval of the aforesaid gas contract to be entered into between the Illinois Natural Gas Company and the Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the [fol. 29-52] State of Illinois is granted only upon express conditions as follows:

"(a) that the Commission may, and reserves the right to, require the said Illinois Natural Gas Company, or any successor in interest, to terminate the aforesaid contract in whole or in part at any time, whether within the original term of five (5) years or thereafter, in the event that a

supply of natural gas becomes available to the Illinois Natural Gas Company in the general area served by it with natural gas, at a lower price or upon more favorable conditions than the said gas is being obtained from the Panhandle Eastern Pipe Line Company, provided however that in the event of such termination for the reason aforesaid, the Panhandle Eastern Pipe Line Company shall be entitled to notice of at least one (1) year after the date of any order of the Commission requiring such termination, before the said termination become effective;

"(b) that the Commission may, and reserves the right to, require the Illinois Natural Gas Company, or any successor in interest, to terminate the aforesaid contract in whole or in part at any time, whether within the original term of five (5) years or thereafter, but upon reasonable notice, whenever in the opinion of the Commission the public interest for any reason other than that stated hereinbefore in sub-paragraph (a) requires the termination of the aforesaid contract;

"(c) that the aforesaid contract when executed contain appropriate clauses providing for the termination thereof in accordance with this order.

"It is Further Ordered that promptly upon consumma- [fol. 29-53] tion of the transfer, assignment and conveyance of the property and assets of Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, respectively, under the terms of the aforesaid contract dated February 18, 1938, said Illinois Natural Gas Company shall own and operate the portion of said property and assets transferred, assigned and conveyed to it as a public utility and shall file with this Commission rate schedules, rules, regulations and conditions of service substantially identical with the rate schedules, rules, regulations and conditions of service under which the gas public utility business of Panhandle Illinois Pipe Line Company within the State of Illinois is now being carried on and conducted, and that such rate schedules, rules, regulations and conditions of service under which the gas public utility business of Illinois Natural Gas Company shall be carried on and conducted, shall become effective as of the date of the transfer of said property.

"It is Further Ordered that upon consummation of the

several transactions contemplated under the terms of the aforesaid contract of February 18, 1938, and upon the transfer, assignment and conveyance of all of the property of Panhandle Illinois Pipe Line Company, in accordance with the terms of said contract, and of this order, and upon the execution of the aforesaid gas contract between the Illinois Natural Gas Company and the Panhandle Eastern Pipe Line Company, and the filing of a copy thereof with this [fol. 29-54] Commission, said Panhandle Illinois Pipe Line Company shall (a) forthwith cease operation as a public utility within the State of Illinois, (b) cremate its said promissory notes consisting of $5,000,000 aggregate principal amount of promissory notes, (c) cancel all of its capital stock and dissolve the corporation as provided by "The Business Corporation Act" in force in the State of Illinois, and (d) file a report (in duplicate) with the Commission, which report shall be signed and verified under oath by an executive officer of said company having knowledge of the facts, and shall show (1) the date as of which it transferred its property and ceased operations as a public utility, (2) the number of shares of its capital stock and the principal amount of its promissory notes surrendered to it by the Panhandle Eastern Pipe Line Company, (3) the amount of said securities cremated, (4) the date and amount of capital stock cancelled as provided by "The Business Corporation Act" in force in the State of Illinois, (5) the date of dissolution of Panhandle Illinois Pipe Line Company and (6) copies of all journal entries made on its books to reflect the transfer and disposition of all of its assets and the cancellation of all of its capital stock and notes and dissolution of the corporation, provided that if all of the transactions hereby authorized or required are not promptly consummated the Panhandle Illinois Pipe Line Company shall file its first report covering the required information not less than sixty (60) days after the date of this order [fol. 29-55] and additional reports every sixty (60) days thereafter until all of the said transactions have been executed and reported to the Commission.

"It is Further Ordered that upon the consummation of the several transactions contemplated under the terms of the aforesaid contract of February 18, 1938 between Illinois Natural Gas Company and Panhandle Illinois Pipe Line Company that Illinois Natural Gas Company shall file a report (in duplicate) with the Commission, which report

shall be signed and verified under oath by an executive officer of said company having knowledge of the facts, and shall show (1) the date as of which it began operations as a public utility, (2) the amount of capital stock issued, (3) the date or dates of such issuance, (4) to whom said stock was issued, (5) copies of all journal entries made on its books to reflect the acquisition of property and the issuance of its capital stock herein authorized, provided that if all of the transactions hereby authorized or required are not promptly consummated the Illinois Natural Gas Company shall file its first report covering the required information not less than sixty (60) days after the date of this order and additional reports every sixty (60) days thereafter until all of the said transactions have been executed and reported to the Commission.

"It is Further Ordered that Panhandle Illinois Pipe Line Company shall make final report to the Commission of its operation as a gas utility in the State of Illinois from the [fol. 29-56] last date covered in the last annual report made to the Commission by said company to the date of transfer of its properties and certificates of convenience and necessity to the Illinois Natural Gas Company, and that such report shall be made (in duplicate) upon the Annual Report Form Number 11 for Gas Utilities, and shall be filed with the Commission within ninety (90) days after the date of transfer of property herein authorized.

"It is Further Ordered that the consent and approval of the Commission herein granted to the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company be, and they are hereby, granted upon the condition that the original or true copies of the books and records of Panhandle Illinois Pipe Line Company be delivered to the Illinois Natural Gas Company, and that the same be retained and preserved by the said Illinois Natural Gas Company under the same rules for preservation of records as are lawfully established by the said Illinois Natural Gas Company or prescribed by this Commission for the preservation of the records of the last mentioned company.

"It is Further Ordered that Illinois Natural Gas Company shall enter the property acquired and the depreciation reserve applicable thereto on its books in conformity with Commission's General Order 143.

"It is Further Ordered that petitioner, Illinois Natural [fol. 29-57] Gas Company, shall before the delivery of certificates representing the stock herein authorized to be issued by it, cause to be printed, stamped or engraved upon the face of each of said stock certificates, for the proper and easy identification thereof, the following:

"Illinois Commerce Commission
Authorization No. *2461*
June, 1938"

"By order of the Commission at Chicago, Illinois, this 15th day of June, 1938.

(Signed) William W. Hart, *Secretary*". Stevens & Herndon, *Attorneys for Petitioner-Appellee.* John E. Cassidy, *Attorney-General, State of Illinois, Attorney for Illinois Commerce Commission.* Harry R. Booth, *Assistant Attorney General, Of Counsel.* (Seal.)

[fols. 30-31] IN SUPREME COURT OF ILLINOIS

Appeal. Circuit Court, (Coles)

No. 25992

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

ORDER OF SUBMISSION—December 19, 1940

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said

cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 32] IN SUPREME COURT OF ILLINOIS

Docket No. 25992—Agenda 55—December, 1940

THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY *et al.*, Appellees,

v.

THE ILLINOIS NATURAL GAS COMPANY, Appellant

OPINION—Filed February 18, 1941

Mr. Justice Farthing delivered the opinion of the court:

The Central Illinois Public Service Company filed with the Illinois Commerce Commission a petition for an order requiring the Illinois Natural Gas Company to furnish natural gas to it at wholesale. The gas company's defense was that it was engaged in interstate commerce and was under the exclusive jurisdiction of the Federal Power Commission and, therefore, the Illinois Commerce Commission lacked jurisdiction. The commission held against the gas company and granted the prayer of the petition. On appeal, the circuit court of Coles county affirmed this order and appellant has perfected a further appeal to this court.

The main question is whether the Illinois Natural Gas Company is engaged in interstate or intrastate commerce. The facts are not disputed. The Illinois Natural Gas Company is a wholly-owned subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware corporation, hereafter called the Illinois Natural, owns certain lateral trans- Natural Gas Company will enter into a gas contract with its high pressure mains through several States, including Illinois. Its main runs in a general east and west direction through Illinois. The Illinois Natural Gas Company, hereafter called the Panhandle company. That company gathers mission lines and incidental equipment all of which are located in Illinois. Gas is delivered to it at the points where its lateral transmission lines intersect the high pressure main of the Panhandle company. Gas is furnished to the Illinois Natural pursuant to a contract between it and

the Panhandle company approved by the Illinois Commerce Commission. When the gas enters the lateral transmission lines of Illinois Natural pressure is reduced for economical transportation and delivery. This company delivers the gas from its lateral lines to local public utility companies, which, in turn, distribute it to the general public. Before delivery to these local utilities the pressure is further reduced.

Appellant argues that although all the property owned by it is located entirely in Illinois and although it sells natural gas only to Illinois utilities, it nevertheless is engaged in interstate commerce and is not subject to the [fol. 33] regulations of the Illinois Commerce Commission. In support of this position, it points out that in packing the high pressure transmission line from day to day with natural gas from the sources of supply, Panhandle estimates the quantities of natural gas that will be used by Illinois Natural and other companies purchasing from Panhandle, in Illinois and other States, and each day continuously transports sufficient gas to satisfy the requirements of all of these customers.

Several cases claimed by both sides to be more or less analogous to the one before us have been cited and discussed in the briefs. In *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465, 75 L. Ed. 117, the East Ohio Gas Company was an Ohio corporation which furnished natural gas to consumers in more than fifty municipalities in that State. It bought part of its gas from outside the State. At the State line the gas went into this company's high pressure transmission lines and these connected with distribution lines where less pressure was maintained. An Ohio statute taxed the gross receipts of corporations engaged in the business of supplying natural gas to consumers within the State. It was held the proceeds from the sale of gas bought outside the State were taxable under the statute and the contention that this was interstate commerce was overruled. The Supreme Court of the United States said: "The transportation of gas from wells outside Ohio by the lines of the producing companies to the State line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes

while it is en route from State to State is not determinative of the question whether interstate commerce ends." This statement is relied on by appellant. However, the court went on to hold in that case: "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves for- [fol. 34] ward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." It is important to note in considering the instant case that it is not claimed appellant was engaged in intrastate commerce as far as its relations with the Panhandle company are concerned. Here, as in the *East Ohio Gas Co. case*, the claim is made that after the gas is in the lateral lines of Illinois Natural, its pressure reduced and ready for delivery to local utilities, it is no longer in interstate commerce.

In *Missouri* v. *Kansas Natural Gas Co.* 265 U. S. 298, 68 L. ed. 1027, it was held the transportation of gas through pipe lines from one State to another for sale to distributing companies is interstate commerce. That same proposition is laid down in *Public Utilities Com.* v. *Landon*, 249 U. S. 236, 63 L. ed. 577. But in that case the court held: "But in no proper sense can it be said under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business." The court also stated that "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

In *Public Utilities Com.* v. *Attleboro Steam & Electric Co.* 273 U. S. 83, 71 L. ed 549, a Rhode Island company sold electricity to a Massachusetts firm and made delivery

at the State line. It was held this was interstate commerce and the rates could not be regulated by the Rhode Island Public Service Commission. That, clearly, was an attempt to regulate interstate commerce and is not in point here.

In *Southern Natural Gas Corp.* v. *Alabama,* 301 U. S. 148, 81 L. ed. 970, the question presented was whether the imposition of a franchise tax upon the Southern Natural Gas Corporation was invalid as a direct burden upon interstate commerce. There the Southern company was engaged in the transmission of natural gas from Louisiana and Mississippi to various States. It had contracts for delivery of natural gas to four purchasers in Alabama. Three were intrastate utilities and the fourth a consumer. The gas was delivered in continuous movement from the gas fields [fol. 35] without break or interruption to the point of delivery, viz., the meter house at which the gas so sold was measured for the purpose of payment. At this point pressure was reduced and the gas measured. The contracts with the utilities contained detailed provisions as to delivery, pressure, measurement, etc. The contract with the Tennessee company (the consumer) also provided the Southern company should maintain service lines to the different plants of the consumer. It was held the sale to this company was intrastate business. The court said there was no essential distinction between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the *East Ohio Gas Company case, supra.* The court also quoted with approval this language from *Missouri* v. *Kansas Natural Gas Co. supra*: "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

We think clearly the local interest, in the case before us, is paramount and the national interest indirect and of minor importance. No attempt is made to regulate the transmission or delivery while the gas is in the high pressure lines, on its way through the State of Illinois or from a point without to a point within Illinois. No such at-

tempt is made until the gas has left the high pressure lines, its pressure reduced, and delivered to the wholly intrastate lines ready for delivery to local utilities. The question of what local utilities are entitled to be furnished with this gas is primarily one of local concern. Although the quantity of gas to be transmitted from the sources of supply will, of course, depend in part on the amount used in Illinois, that does not render the business of the distributing company in furnishing gas to local companies interstate in character.

In view of our holding that the order of the commission affects only intrastate commerce, the contention that the Natural Gas act (15 U. S. C. A. 717, *et seq.*) gives the Federal Power Commission exclusive jurisdiction of the [fol. 36] matters involved in this proceeding must be overruled. The provisions of that act plainly show they apply only to interstate commerce, and that the act was not intended to disturb the States in the exercise of their jurisdiction over the sale and distribution of natural gas in intrastate commerce. Thus, section 1(b) of the act reads, in part: "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The judgment of the circuit court is affirmed.

Judgment affirmed.

[fols. 37-38] IN SUPREME COURT OF ILLINOIS

No. 25992

Appeal from Circuit Court, Coles County (2179)

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

JUDGMENT—February 18, 1941

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and in-

spected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious of defective, and in that record there is no error.

Therefore, it is considered by the Court that the Judgment of the Circuit Court of Coles County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant Costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Edward F. Cullinane, Clerk pro tempore of the Supreme Court of the State of Illinois and Keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 6th day of March A. D. 1941.

Edward F. Cullinane, Clerk Pro Tempore. (Seal.)

[fol. 39] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS TO THE SUPREME COURT OF THE UNITED STATES —Filed April 22, 1941

To the Chief Justice of the Supreme Court of the State of Illinois:

Illinois Natural Gas Company, your Petitioner, respectfully shows:

1. Petitioner is the Appellant in the above entitled cause.

2. Appellee, Central Illinois Public Service Company, filed a petition (in the nature of a complaint) with the Illinois Commerce Commission on May 22, 1939 against Appellant,

seeking an Order from the Illinois Commerce Commission requiring Appellant to furnish said Appellee with wholesale natural gas at or near the City of Mattoon, Coles County, Illinois, and said Commission entered its Order on November 30, 1939, in favor of said Appellee, directing Appellant to make such installations and connections with Appellee's natural gas system at or near the City of Mattoon, Illinois as shall be adequate for supplying said Appellee with its natural gas requirements in the City of Mattoon, and other cit-es and communities in the State of Illinois and upon completion of said installations and connections to supply said Appellee with such natural gas requirements.

3. Appellant's petition for rehearing was filed with the Illinois Commerce Commission on December 28, 1939 and was denied on January 3, 1940.

[fol. 40] 4. An appeal from said Order of the Illinois Commerce Commission was duly perfected to the Circuit Court of Coles County, Illinois, which court affirmed said Order of the Illinois Commerce Commission on August 2, 1940.

5. Thereafter, an appeal was duly perfected to the Supreme Court of the State of Illinois, which court, on February 18, 1941 affirmed the judgment of the Circuit Court of Coles County. No motion for rehearing has been filed by Appellant and time therefor expired on March 5, 1941.

6. That as appears in the record and proceedings in this cause, there was drawn in question the validity of an Order of the Illinois Commerce Commission and of a statute of the State of Illinois, as applied to Appellant, and under the supposed authority of which statute said Order was made, on the ground of the repugnancy of said Order and said statute to the Constitution and laws of the United States in that said Order of the Illinois Commerce Commission and said statute, the Illinois Commerce Commission Act of June 29, 1921 (Chap. 111-2/3, Illinois Revised Statutes, 1939), and particularly Section 50 thereof, as applied to Appellant, and under the purported authority of which statute said Order was made, are in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America and, as applied to Appellant, are in direct conflict with the Natural Gas Act, 52 Stat. 821-33 (U.S.C.A., Title 15, Sec. 717-717W). The final decision of the Supreme Court of the State of Illinois, which is the highest court of said state in

which a decision could be had, was in favor of the validity of said order of the Illinois Commerce Commission and of said statute of the State of Illinois, as applied to Appellant, and under the supposed authority of which the Order was made.

Wherefore, Petitioner prays for the allowance of an appeal from said Supreme Court of the State of Illinois to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Illinois may [fols. 41-42] be examined and reviewed and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Illinois, may be sent to the Supreme Court of the United States as provided by law. Petitioner, desiring the appeal to be a supersedeas, prays an Order touching the security to be required of it and the approval of such bond as required in this case.

The errors upon which your Petitioner claims to be entitled to appeal are those above indicated and more fully set out in the Assignment of Errors filed herewith.

Dated this 21st day of April, 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Petitioner and Proposed Appellant.

[fol. 43] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 22, 1941

The petition of Illinois Natural Gas Company for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Illinois and the Assignment of Errors filed therewith and the record in said cause having been considered, it is

Ordered that an appeal be and the same is allowed to the Supreme Court of the United States from the Supreme Court of the State of Illinois as prayed in said petition and that the Clerk of the Supreme Court of the State of Illinois shall prepare and certify a transcript of the record and the proceedings in the above cause and transmit the same to

the Supreme Court of the United States within forty days from the date hereof.

It Is Further Ordered that said Illinois Natural Gas Company shall give good and sufficient security in the sum of Fifteen hundred ($1500.00) Dollars, that said Appellant, Illinois Natural Gas Company, shall prosecute said appeal to effect and if said Appellant fails to make its plea good, it shall answer all damages and costs.

The said Appellant now presenting a bond in the sum of Fifteen hundred ($1500.00) Dollars with The Century Indemnity Company as surety, it is

Ordered that the same be, and is hereby, approved.

[fols. 44-45] The appeal shall operate as a supersedeas.

Dated this 21" day of April, 1941.

Walter T. Gunn, Chief Justice of the Supreme Court of Illinois. (Seal.)

Attest: Edward F. Cullinane, Clerk of the Supreme Court of Illinois.

[fol. 46] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 22, 1941

The said Illinois Natural Gas Comapny, Appellant herein, assigns the following errors in the record and proceedings in this cause:

1. The Supreme Court of the State of Illinois erred in holding and deciding that the assumption of jurisdiction by Illinois Commerce Commission, the Order of the Illinois Commerce Commision and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, as applied to Appellant, and under the supposed authority of which statute said Order was made, were valid and constitutional although said Order requires Appellant to subject itself and its activities to the jurisdiction of Illinois Commerce Commission, to render natural gas service to Appellee, Central Illinois Public Service Company, for its requirements for resale in the cities of Mattoon, Charleston, Paris and Effingham, Illinois and communities intermediate thereof, and to construct and extend a natural gas pipe

line and facilities for a distance of approximately twenty miles for such purposes, because said Order and said statute as so construed and applied are unconstitutional and void, in that they are repugnant to the Constitution of the United States and particularly Article I, Section 8, Clause 3, thereof.

2. The Supreme Court of the State of Illinois erred in upholding as valid the assumption of jurisdiction by the Illinois Commerce Commission, the Order of the Illinois [fol. 47] Commerce Commission, and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, under the purported authority of which said Order was made, which, as construed and applied to appellant by said court, subject Appellant and its activities to the jurisdiction of the Illinois Commerce Commission and require Appellant to extend its natural gas pipe line and facilities for a distance of approximately twenty miles and to render natural gas service for the natural gas requirements of several cities and communities in the State of Illinois, because said Order and statute, as so construed and applied to Appellant, are illegal and void in that they are repugnant to and in direct conflict with the Natural Gas Act, 52 Stat. at L. 821-33, U. S. C. A., Title 15, Sec. 717-717W.

3. The Supreme Court of Illinois erred in deciding and holding that the activities of Appellant in transporting, selling and delivering natural gas in the State of Illinois constitute intrastate commerce rather than interstate commerce and that said Order of the Illinois Commerce Commission, as applied to Appellant and its activities, is not repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States of America or to the Natural Gas Act, 52 Stat. at L. 821-33, Title 15, U. S. C. A. 717-717W.

4. In this cause there was drawn in question the validity of said Order of the Illinois Commerce Commission and of said statute of the State of Illinois (The Illinois Commerce Commission Act of June 29, 1921, Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof), as applied to Appellant, and under the supposed authority of which statute said Order was made,

on the ground that said Order and said statute were repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States of America, and to the Natural Gas Act, 52 Stat. at L. 821-33, U. S. C. A., Title 15, 717-717W, and the decision of the Supreme Court of the State [fols. 48-74] of Illinois, which was in favor of the validity of said Order and said statute, as applied to Appellant, is hereby assigned as error.

For which errors Appellant, Illinois Natural Gas Company, prays that said judgment of the Supreme Court of the State of Illinois, dated February 18, 1941, in the above entitled cause, be reversed and a judgment rendered in favor of the said Appellant, Illinois Natural Gas Company.

Dated this 21st day of April, 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Appellant, Illinois Natural Gas Company.

[fols. 75-79] Supersedeas bond on appeal for $1500 approved April 21, 1941 and filed April 22, 1941, omitted in printing.

[fols. 80-82] Citation in usual from showing service April 22, 1941 on Central Illinois Public Service Company and Illinois Commerce Commission omitted in printing.

[fol. 83] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed April 24, 1941

To the Clerk of the Supreme Court of Illinois:

You are hereby requested to make a Transcript of Record to be filed in the Supreme Court of the United States, on or before the 31st day of May, 1941, pursuant to an appeal allowed in the above entitled cause, and to include in such Transcript of Record the following and no other papers and exhibits, towit:

1. Abstract of Record filed in the Supreme Court of the State of Illinois on November 9, 1940 by the Appellant.

2. Additional Abstract of Record filed in said Court on December 3, 1940 by the Appellees.

3. Pages 16 to 28, both inclusive, of the printed Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938, as appears at Item 182 of the original Record now on file in the Supreme Court of Illinois.

4. The stipulation for the introduction in evidence of No. 3 above, contained in lines 2 through 9 on page 145 of the original Record now on file in the Supreme Court of Illinois, being the statement beginning:

"Mr. Stevens: Could we make it more specific at this" and the seven succeeding lines.

5. That portion of the original Record now on file in the Supreme Court of Illinois, beginning on page 145 thereof with the following line:

[fols. 84-109] "Mr. Stevens: I think we introduced at the former—" and continuing through the line on page 150 thereof which reads:

"Mr. Farrell: The objection is overruled and the motion is denied."

6. Statement of Errors relied upon for reversal, appearing on pages 7 and 8 of Appellant's Statement, Brief and Argument, filed in the Supreme Court of Illinois.

7. Opinion of the Supreme Court of the State of Illinois in Case No. 25992, rendered on February 18, 1941.

8. All statements and motions required and permitted to be filed under the provisions of Rule 12 of the Rules of the Supreme Court of the United States, including (a) the Petition for Appeal, (b) the Order allowing appeal, (c) the Assignment of Errors, (d) Jurisdictional Statement of Appellant, (e) Appellant's Statement directing the attention of Appellees to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, and (f) Proof of Service upon Appellees of the papers listed in (a), (b), (c), (d) and (e) above.

9. Citation upon Appellees.

10. Praecipe and proof of service thereof upon Appellees.

Dated this 24th day of April, A. D. 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Illinois Natural Gas Company, Appellant.

Received a true copy of the foregoing Praecipe this 24th day of April, A. D. 1941.

George F. Barrett, Attorney for Illinois Commerce Commission, Appellee. Stevens & Herndon, Attorneys for Central Illinois Public Service Company, Appellee.

[fols. 110-111] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 112] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 26, 1941

Comes now Illinois Natural Gas Company, Appellant in the above entitled cause, and states that the points on which it intends to rely in this Court are those contained and set forth in the Assignment of Errors filed with the Clerk of this Court.

Appellant further states that the record as filed with the Clerk of this Court is deemed necessary to be printed for the consideration of the points Appellant intends to rely upon as aforesaid.

Glenn W. Clark, Russell Voertman, Albert C. Schlipf, Counsel for Appellant.

We hereby acknowledge service upon us this 21st day of May, 1941 of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed.

Central Illinois Public Service Company, by A. D. Stevens, Its Attorney. Illinois Commerce Commission, by George F. Barrett, Attorney General of the State of Illinois, Its Attorney.

Endorsed on Cover: File No. 45,427, Illinois Supreme Court, Term No. 100. Illinois Natural Gas Company, Appellant, vs. Central Illinois Public Service Company and Illinois Commerce Commission. Filed May 22, 1941. Term No. 100 O. T. 1941.